

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4717/M/2023
Assessment Year: 2013-14**

M/s. Pioneer Chemical Industries, Kautilya Bhavan, Avenue 3, Near Videsh Bhavan, G Block BKC, Bandra Kurla Complex, Bandra East, Mumbai – 400 051 PAN: AAAFP1889Q	Vs.	Income Tax Officer, Ward 25(3)(1), 104, Giriraj, Iron Market, Sant Tukaram Road, Iron Market, Mumbai, Maharashtra- 400 009
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Himanshu Gandhi, A.R.

Revenue by : Shri C.T. Mathews, Sr. DR

Date of Hearing : 21 . 05 . 2024

Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 20.11.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. In this case, the assessee has claimed an amount of Rs.7,09,248/- under the head "travelling expenses". Therefore, the assessee was asked by the Assessing Officer (AO) to give details of the expenses incurred for business purposes, in response to which the assessee filed the details. Perusing the same, it was noticed by the AO that the assessee travelled to USA, Hyderabad, Chennai, Ahmadabad and Zambia during the year under consideration.

3. The Assessee in response and in support of its claim qua USA trip filed its written submission, which is reproduced below:

"3. Trip to USA:- As briefed in note on our business with Unimed International Ltd., I was Called by Unimed to hold meeting in USA as the main procurement director and his team from MOH Zambia was in US at that time, to have meeting with them regarding likely annual procurement of Anti Malaria medicine from India which was going to be on large scale and hence had to go to US for the same to meet the buyer prior to them coming to India for plant visit. The same meeting paid fruit when the first order was placed in May with an order of approx. US \$ 3.9 million with our supplier in Vapi.

All the expenses for above visits are borne by us."

4. The assessee in support of its claim also produced a copy of Memorandum Of Understanding dated 05.07.2008 entered into by the assessee with United International Ltd., crux of which is as under:

"Whereas Pioneer Chemical Industries will offer their procurement services and guidance from time to time within India, and in the event of any procurement takes through India a commission not exceeding 10% (Ten Percent) of the

contract sum or part there off, will be made payable to Pioneer Chemical Industries or their Nominees by Unimed International Limited."

5. The AO though considered the aforesaid details furnished by the assessee, however, by perusing the same ultimately observed that from the MOU, it is clear that the assessee is procurement agent of Unimed International Ltd. in India and as per the assessee's reply all the expenses are borne by United International Ltd. Regarding visit to USA the assessee has explained that Unimed International Ltd. called the assessee to hold meeting in USA to have meeting for MOH Zambia. "Unimed" is a UK based company supplying medicine to various countries. So assessee's visit to USA has no connection with its business activities. The assessee has failed to prove business exigency of visit to USA along with supporting documentary evidences. The AO ultimately disallowed the expenses to the tune of Rs.3,96,926/- and Rs.1,43,365/- totaling to Rs.5,40,291/- expenses allegedly claimed to be incurred on visit to USA and Zambia and treated the same as non business expenses and accordingly added to the taxable income of the assessee. The AO also made disallowance of Rs.1,29,174/- on account of various expenses such as telephone, vehicle & depreciation expenses.

6. The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner who though deleted the addition of Rs.1,29,174/-, however, affirmed the addition of

Rs.5,40,291/- under section 37(1) of the Act by holding as under:

“V. DECISION:- *I have gone through the assessment order passed by Assessing Officer (AO) and details of submission given by appellant.*

The fact of the case is appellant had claimed Rs.7,09,248/- under the head 'Travelling Expenses'. AO had disallowed travelling expenses incurred on visit to USA & Zambia to the tune of Rs.3,96,926/- and Rs.1,43,365/-, totaling to 5,40,291/- u/s 37(1) treating them as "Non-Business Expenses" and accordingly added back to the taxable income of the appellant.

As per Memorandum of Understanding (MOU) Dated 5.7.2008, entered into by the appellant with United International Ltd From the MOU, it is clear that appellant is procurement agent of Unimed International Ltd. in India and as per appellant's reply all the expenses are borne by United International Ltd. Regarding visit to USA, appellant had explained that Unimed International Ltd. So appettant's visit to USA and Zambia had no connection with its business activities. Appellant had failed to provide documentary evidence of business exigencies to incur such expenses. Therefore, there are no infirmities in AO's action on this issue.

In the result, appeal of appellant on this ground is dismissed.”

7. We have heard the parties and perused the material available on record and also given thoughtful considerations to the peculiar facts and circumstances of the case. We observe that both the authorities below have categorically observed in their orders that as per assessee's reply, all the expenses are borne by United International Ltd. whereas as demonstrated by

the Ld. A.R. that all the expenses incurred for visit to USA & Zambia have been incurred by the assessee itself. Further, both the authorities below also observed that the assessee's visit to US and Zambia had no connection with its business activities and the assessee has failed to prove documentary evidence of business exigencies to incur such expenses. Whereas it is a fact that the assessee procured the orders after visiting the US and Zambia, as it appears from the documents submitted by the assessee before us with a certification that the said documents such as copy of Memorandum of Understanding executed between Assessee and Unimed International Ltd., copy of order received from Unimed International Ltd. for US \$ 3.9 million in May 2013, copy of mail communication qua Zambia trip with the client etc. were available before the authorities below.

7.1 We also observe that it is not the case of the Revenue Department that the assessee has visited US and Zambia for his personal visit along with his wife or children or any other family member(s) or friend(s). Even otherwise there is no material available on record and also not brought by the Revenue Department to contradict the claim of the assessee, hence finding the claim of the Assessee as bonafide and genuine, as the expenses incurred by the Assessee in travelling, ultimately resulted into procurement of the assignment/contract, hence do not warrant any disallowance. Consequently, the addition under consideration made on disallowance of expenses is deleted.

8. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.