

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2768/M/2024
Assessment Year: 2017-18**

M/s. Lotus Labs Private Limited, 10 th Floor, D Wing Tower II, Seawoods Grand Central, Plot No.R-1, CBD Belapur Railway Station Complex, Navi Mumbai, Maharashtra - 400 706 PAN: AAACL5328D	Vs.	ACIT Circle-15(2)(1), Room No.357, 3 rd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai, Maharashtra- 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Pratiksha Jain, C.A. &
Shri Jayesh Chobisa, C.A.

Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 22 . 07 . 2024

Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 20.03.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ 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. 2017-18.

2. In the instant case, during the course of scrutiny proceedings, the Assessing Officer (AO) by seeing "*that the Assessee had claimed expenses towards provision for expenses under "legal and professional charges" amounting to*

Rs.1,37,79,531/-“ , show caused the Assessee to substantiate as to why such provisions should not be disallowed, as the invoices were not even raised during the year.

3. The Assessee in response filed its reply dated 18.12.2019 and claimed as under:

“That during the year under consideration the Assessee has accounted provision of Rs.8,00,000/- towards legal and professional charges on account of audit fees qua BSR & Co. LLP and claimed the same as deduction u/s 37 of the Act. Further, the abovementioned provision for expenses had been created in the books of account maintained by the Assessee on accrual and prudence basis for legal and professional charges. Since the expenditure incurred was wholly and exclusively for the purpose of the business of the Assessee, therefore such provision is mandatorily required to be created when the books of accounts were mentioned “maintained under mercantile system and/or accrual basis of accounting” .

4. The AO though considered the above submissions of the Assessee, however, not found acceptable and therefore disallowed the amount of Rs.8,00,000/- and added back to the total income of the Assessee by observing *“that it is not ascertainable how the Assessee has arrived at such an “exact expense”. In other words, the Assessee has arrived at an estimate and the provisions arrived at cannot be ascertainable expenses. In the present case the exact amount cannot be ascertained and it becomes contingent in nature. Also in this case for A.Y. 2015-16 the decision of the Ld. CIT(A) is in favour of the Revenue in this regard” .*

5. On appeal, the Ld. Commissioner affirmed the aforesaid addition by dismissing the appeal of the Assessee.

6. Having heard the parties and given thoughtful considerations to the peculiar facts and circumstances of the case. The AO made the addition mainly on the ground that the amount of Rs.8,00,000/- arrived at an estimate cannot be ascertainable expenses and therefore becomes contingent in nature and identical addition has been confirmed in favour of the Revenue in the case for A.Y. 2015-16 . We observe that co-ordinate Bench of the Tribunal in the Assessee’s case

for the A.Y. 2015-16 on the basis of which the AO in this case has made the addition, has dealt with identical addition/disallowance and has already deleted the same. Hence, the addition made by the AO and sustained by the Ld. Commissioner is un-sustainable, hence the same is deleted.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31.07.2024.

**Sd/-
(GAGAN GOYAL)
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.