

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

**BEFORE SHRI NARENDRA KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.903/M/2024
Assessment Year: 2012-13**

Thomas Cook (India) Limited Thomas Cook Building, Dr. D. N. Road, Fort, Mumbai- 400001. PAN: AA ACT4050C	Vs.	Office of the Commissioner of Income Tax - 1(3)(1) Room No. 535, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai- 400020.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Ketan Ved, A.R.

Revenue by : Shri P. D. Chougule (Addl. CIT) SR. DR.

Date of Hearing : 29 . 07 . 2024

Date of Pronouncement : 19 . 08 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]



vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059756943(1)

Dated 16/01/2024 for the Assessment Year 2012-13.

2. Following grounds of appeal have been raised by the appellant:

“The appellant objects to the order dated 30 September 2021 passed under section 143(3) of the Income-tax Act (The Act) by the Additional Commissioner of Income Tax Range 1(3)(1), Mumbai, (‘Ld. AO’) for the aforesaid assessment year on the following among other grounds:

- 1. The Ld. AO erred in assessing total income of the appellant at Rs.86,71,36,080/- as against Rs.83,24,56,080/-declared in the return of income.*
- 2.1. The Ld. AO erred in disallowing following expenditure under section 37(1) of the Act on the basis of an erroneous observation that the genuineness thereof is not verifiable*
 - a. Legal and professional expenses aggregating to Rs.1,42,00,000/- being ad-hoc disallowance at 10% of total expense.*
 - b. Travelling and conveyance expense aggregating to Rs.1,42,80,000 being ad-hoc disallowance at 15% of total expense.*
 - c. Employee benefit expenses aggregating to Rs 62,00,000 being ad-hoc disallowance at 5% of total expense.*
- 2.2. The Ld. AO erred in disallowing such expenditure on ad-hoc basis without providing sufficient opportunity of being heard.*
- 2.3. The Ld. AO failed to consider that the Appellant has produced sufficient evidence in the form of invoices, past and subsequent years trend of expenses and monthly break-up of expenses to substantiate its claim.*
- 2.4. The Ld. AO failed to appreciate that the appellant company being in Travel Industry is facing tremendous challenges in the COVID pandemic period of lockdown and employee laid off which has made it difficult to bring 100% supporting documents for verification of*

the ACIT, in spite of having all the evidence in their possession.

- 2.5. *The appellant prays that the Respondent be directed to delete the addition made of Rs.3,46,80,000/-*
3. *The Ld. AO erred, in facts and in law, in initiating penalty proceedings under section 271(1)(c) of the Act.*
4. *The Id. AO erred in levying interest under section 2348, 234C, 234D of the Act.*
5. *Each one of the above grounds of appeal is without prejudice to the other.*

The Appellant craves leave to add to, alter, amend or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”

3. The facts of the case, in brief, are that the return of income was filed by the assessee on 29/11/2012, declaring total income at Rs.83,24,56,080/-. The case was scrutinized and accordingly, assessment was finalized u/s. 143(3) of the Act dated 04/03/2016, assessing the total income at Rs.86,71,36,080/- under normal provision of the Act and Book profit of Rs.84,78,01,372/- u/s.115JB of the Act. Following additions were made to income of the assessee company:-

1.	Travelling and Conveyance Expenses	Rs.1,42,80,000/-
2.	Legal & Professional Expenses	Rs.1,42,00,000/-
3.	Employee Benefit Expenses	Rs.62,00,000/-



4. Being aggrieved by the assessment order passed u/s 143 (3) of the Act, the assessee company filed an appeal before the Ld. CIT(A)- 3, Mumbai, who, vide its order dated 22/04/2017 dismissed the assessee's appeal.
5. Further aggrieved by the order of the Ld. CIT (A), the assessee filed second appeal before the Hon'ble Income Tax Appellate Tribunal. Hon'ble ITAT 'E' Bench, Mumbai vide its order dated 20/09/2019 in ITA No.4531/Mum/2017 restored the matter back to the file of the AO for fresh adjudication with a direction that AO shall provide the assessee adequate opportunity of being heard to substantiate its claim of expenses on the ground that that assessee had stated before them that he was in the possession of certain evidences relating to the said expenses which were not considered by the AO.
6. Accordingly, notice u/s. 142(1) of the Act was issued by the AO and the assessee was asked to produce corroborative evidences to establish the genuineness of the expenses- legal, professional, travelling and employee benefit expenses which were claimed by the assessee company in its P & L A/c. In response to the notice u/s. 142(1) dated 26/09/2021 the assessee company, vide its letter dated 28/09/2021 made submissions before the AO but he was not convinced with the genuineness of the expenses so claimed on the ground that the assessee could substantiate expenses to the



tune of Rs.56 lakh only out of Rs.36.18 crores claimed in the P & L A/c.

The AO, further, noted in the assessment order under reference as under:-

“6.1 This conduct of the assessee has to be seen in the light of the time frame where we are now. The original Assessment was done on 04/03/2016 and appeal before the Id. CIT (A) was decided on 22/04/2017 and the set-aside proceedings are being concluded in mid-2021 on the directions of the Hon'ble ITAT. The assessee failed to submit the required evidences/details before the AO at the time original assessment proceedings in 2016, before the Id. CIT (A) in 2017 & before the AO at the set-aside stage in 2021. This proves beyond doubt that assessee do not have full evidences to substantiate its expenses. It is to be noted that the assessee has simply made certain evidences on a pick and choose basis instead of submitting full set of evidences on the legal fees, professional and travelling expenses and employee benefit expenses. It is settled principle of law that assessee shall maintain all the evidences in support of the claims made in the profit and loss account. In this case, assessee failed miserably on this front at all stages.

Under these circumstances, it is not possible to allow the expenses. Hence, I am compelled to continue the disallowance made by the then AO as assessee failed to substantiate its expenses with corroborative



evidences. Penalty proceedings u/s 271(1) (c) of the I.T. Act, 1961 is hereby initiated.”

7. When the assessee filed the appeal against the order of the AO, passed u/s. 143(3) r.w.s. 254 of the Income Tax Act 1961 dated 30/09/2021 for the assessment year 2012-13, the Ld. CIT(A) confirmed the additions made by the AO on the ground that the appellant failed to substantiate the claims of expenses as no evidence was produced except few vouchers which could not establish the genuineness of the said expenses.
8. The present appeal has been filed before us against the impugned order of the Ld. CIT (A). During the appellate proceedings before us, the appellant submitted a paper book in which it was claimed that details of the said expenses were submitted before the Ld. CIT (A) vide its letter dated 02/11/2023 which was not considered by the Ld. CIT(A) and he simply stated that the appellant has failed to substantiate the expenses claimed in the books of accounts and only few vouchers were submitted before him which are not sufficient to explain the genuineness of the said expenses and thus, the matter be sent to the AO for verification. The Departmental Representative, on the other hand, stated that since the appellant could not explain the genuineness of the said expenses despite being given several opportunities to do so, the appeal should be dismissed as the appellant is wasting time of the income tax authorities.



9. We have considered the rival submissions and we think it proper to restore the matter back to the file of the Ld. CIT (A) to consider the evidences produced by the appellant by providing one more opportunity to explain the genuineness of the expenses claimed in its books of accounts.
10. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 19.08.2024.

Sd/-
NARENDRA KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 19.08.2024.
Snehal C. Ayare, Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.