IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.2118/DEL/2024
(Assessment Year: 2015-16)

ITO, Ward 28 (5), Delhi.	vs.	Satish Sawhney, 1st Floor, West Wing, Chandralok Building 36, Janpath, New Delhi – 110 001. **(PAN : AAAPS2377N)**
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Lalit Mohan, CA
REVENUE BY : Ms. Kirti Sankratyayan, Sr. DR.

Date of Hearing : 07.08.2024
Date of Order : 09.10.2024

O R D E R

PER S.RIFAUR RAHMAN, AM:

1. This appeal is filed by the assessee against the order of ld. Commissioner of Income-tax Appeals/National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to 'Ld. CIT (A)') dated 29.02.2024 for AY 2015-16.

2. Brief facts of the case are, assessee an individual having income from 'House Property', Capital Gain's and other sources. The assessee filed return of income on 31.8.20215 declaring total income of Rs.44,62,580/-.

Later, a revised return was filed on 07.09.2015 showing same income. The case was selected for scrutiny and assessment was completed u/s 143(3) of Income-tax Act, 1961 (for short 'the Act') on 29.12.2017 determining total income at Rs.2,77,09,225/- after disallowing the claim of expenses of Rs.2,30,36,645/- u/s 57(iii) of the Act by holding the same to be excessive in comparison to income earned by the appellant. The AO had also made estimated disallowance of expense of Rs.2,10,000/- u/s 37 of the Act holding the same to be personal in nature.

3. Aggrieved the assessee preferred an appeal before the ld. CIT(A) on 15.1.2018. After considering the submissions made by the assessee, the Ld. CIT(A) deleted both the aforesaid disallowances made in the assessment order dated 29.12.2017 u/s 143(3) of the Act.

4. Aggrieved, the Revenue is in appeal before us and has raised the following grounds of appeal:-

> *"1 Whether on the facts and in law, the ld. CIT(A) have erred in allowing the disallowance u/s 57(iii) of the I.T. Act amounting to Rs. 2,30,36,645/- despite the factual finding of the AO that the assessee's financial advisor has charged a fee of Rs.2,30,36,645/- crore, i.e. more than 75% fee/commission.*
>
> *2 Whether on the facts and in law, the ld. CIT(A) have erred in allowing the disallowance u/s 37(1) of the I.T. Act amounting to Rs. 2,10,000/- despite the factual finding of the AO that the assessee has income from business and profession incurred by him on bills/vouchers, mostly bills were food bills to the tune of Rs.2,10,000 (20% of 10,50,000/-).*

3 That the appellant craves leave to add, amend, alter or forgo any grounds of appeal either before or at the time of hearing of the appeal."

5. At the time of hearing, ld. DR for the Revenue brought to our notice relevant facts of the case from page of the assessment order and heavily relied on the order of the Assessing Officer. He submitted that the issue involved is relating to income from other sources. The assessee is claiming expenditure not relating to the earning of such income. He prayed that the order of the Ld. CIT(A) may be set-aside.

6. On the other hand, ld.AR of the assessee reiterated the submissions made before the Ld. CIT(A) and also submitted written a submission. We have reproduced the relevant submissions below:

6.1. The assessee is an individual having income from 'house property' 'capital gains' and 'other sources'. The assessee has declared foreign income aggregating to Rs. 2,90,32,093/- [Rs. 2,90,30,165 (foreign income-Dividend) + Rs. 1,928/- (foreign income-Interest)] and claimed expenditure of foreign expenditure of Rs. 2,30,39,645/-.

6.2. The factual matrix is that a trust was created by M/s Merrill Lynch (hereinafter referred to as "ML") for the benefit of the assessee and his family members and both the trust and the underlying investment company were being managed by ML through its financial advisor in USA. The income of the trust and the underlying investment company is

being included in the income of the assessee every year. Since, the assessee had no direct control over the account/investments, as he was residing in India and also lacking in accounting knowledge, his financial advisor at ML took advantage and misappropriated lot of funds from the accounts of the trust/investment company and did lot of unauthorized transactions in these accounts and also there were various other irregularities in these accounts.

6.3. It is submitted that pending enquiries against the financial advisor the accounts of the trust/investment company were frozen by ML. ML would not even respond to the requests of the assessee to assign a financial advisor who could advise him on the investments sitting in his portfolio and as a result he lost a lot of money due to volatile market conditions. The assessee submits that since no transactions were being allowed and there was none to guide the assessee and also to understand and address other irregularities in the accounts the assessee had to hire a team of expert professionals being chartered accountants and advocates who could understand the complexities involved in foreign transactions, could analyze these account statements, advise on his investments with ML, could give guidance on applicable laws and who could represent and correspond on his behalf with ML and their attorneys in US and so on.

6.4. The assessee also had to file a claim with FINRA ("Financial Industry Regulatory Authority") in US. Had it not been for the enormous time and efforts put in by the team of expert professionals engaged by the assessee he would have continued to lose his principal what to talk of returns thereon. As a consequence, the assessee has over the period been able to recover and remit to India nearly INR 68,00,00,000 (Indian Rupees Sixty Eight Crores) which have been gainfully invested in India, the returns thereon also form part of the income being offered to tax by the assessee every year.

6.5. Moreover it was also submitted before the learned Assessing Officer that assessee has been offering the income of the trust/investment company every year and had been claiming expenses of similar nature every year and accepting the nexus the expenses have all along been allowed to him by respective assessing officers under assessments completed u/s 143(3) and by the Honorable Settlement Commission for the block years as is tabulated hereunder:-

Assessment year	Income from foreign accounts (Rs.)	Expenses claimed (Rs.)	Assessment
2013-14	1,19,11,518	68,64,779	Hon'ble Income Tax Settlement Commission in its order dated 24.9.2014 Settlement Commission
2014-15	1,23,75,972	1,19,86,330	
2015-16	2,90,32,095	2,30,39,645	Year under consideration

6.6. The learned Assessing Officer failed to appreciate the reason for the expenses and evidences furnished/submitted by assessee in support of his claim and disallowed the entire expenditure of Rs. 2,30,36,645/- without giving adequate opportunity to the assessee. The learned Assessing Officer in the order of assessment in paras 4.4 and 4.5 has held as under:

> *"4.4 Further even if for the sake of discussion, we consider the argument of assessee that these expenditure were for bringing income of Rs. 2,90,32,094/- back into the country and in the safe custody of the assessee, no evidences/documents were provided by the assessee which can prove that these professional charges were actually paid for the above mentioned purposes. The assessee has mentioned that all the accounts were freezed by the ML and he had to engage expert professionals. No evidences were provided by the assessee that his profile was represented by these professional with ML nor did he bring any correspondence with ML proving that there is any legal feud of assessee with ML.*
>
> *4.5 On perusal of the submissions given by the AR, it is found Besides, it is worth noting that no ensure the inflow of Rs.2,90,32,094/- crores back into the country and in the safe custody of the assessee, the financial advisor charged a fee of Rs.2,30,36,645/- crore, i.e. more that 75% fee/commission. Nowhere in the world is there a parallel for such high fees charged by any financial advisor or consultant for any service provided. Normally, fees/commission for such services range from1-5% of the deal value. Thus, if we apply the test of preponderance of probability, such a transaction appears to be inconceivable and unfathomable. A 75% fee for such service would make the financial advisor akin to a goon, and not a consultant, who says to the assessee that he should part with 75% of his funds simply because the alternative is to have none of it with him at all.*
>
> *The above, coupled with the argument that the fee charged by the financial advisor (irrespective of its quantum) was not for the purposes of earning such income, but simply for ensuring that the income already earned by the assessee flows back into his custody,*

as claimed by assessee (which had originally come under threat only because of the casual and lack a daisical approach of the assessee), and thus cannot be allowed as a deduction u/s 57(iii) (as the section requires that the expenditure should be incurred for the purposes of earning such income), the entire quantum of fee paid becomes disallowable."

6.7. This is despite a specific request made to AO in the reply dated 15.12.2017 to the show cause notice that 'Further, it is requested to your goodself to give an opportunity to assessee before taking any adverse view or making any addition on aforesaid point. It was only on 26.12.2017, when the AR of the assessee personally presented before the learned Assessing Officer to submit copies of some documents whose scanned copy was not legible as per the learned Assessing Officer, the AR was further asked to substantiate the claim of assessee by filing proof that professional charges being paid related to income, copies of correspondence with ML, documents evidencing that some legal claim was filed by the assessee on ML etc. All the required documents were sent by Email on 29.12.2017 as the AO refused to accept the documents by hand but they have not been discussed at all in the assessment order received through email on 30.12.2017. The disallowance so made stands deleted by the learned Commissioner of Income Tax (Appeals) vide findings recorded in paras 12 to 12.3 at pages 71-72 of the order.

6.8. It is submitted that the aforesaid issue is no longer res-integra in view of the judgment of Hon'ble Apex Court in the case of CIT v. Rajendra

Prasad Moody reported in 115 ITR 519. It is submitted that the quantum of expenditure is neither determinative nor relevant for allowability of expenditure. It is also submitted that evidences on record in respect of disallowance of sum of Rs. 2,30,36,645/- u/s 57(iii) of the Act is as under:-

<table>
<tr><th>Sr. No.</th><th>Name of the party</th><th>Services rendered</th><th>Amount (Rs.)</th></tr>
<tr><td>i)</td><td>A&G Corporate Services (P) Ltd.</td><td>Professional charges towards handling & advising on banking, FEMA, Tax and other related matters from time to time
Evidence
<table>
<tr><th>Sr. No.</th><th>Nature of evidences</th><th>pages of Paper Book</th></tr>
<tr><td>i)</td><td>Copy of invoice of A & G Corporate Services (P) Ltd.</td><td>152</td></tr>
<tr><td>ii)</td><td>Copy of Form No. 16A of A & G Corporate Services (P) Ltd.</td><td>188 – 189</td></tr>
<tr><td>iii)</td><td>Copy of write-up explaining issues with Merrill Lynch and role of the team of professionals and correspondence with Merrill Lynch and there council from/to Adv. PunjalaSunithaNarhari on the dispute.</td><td>261 – 274</td></tr>
</table></td><td>1,12,36,000</td></tr>
<tr><td>ii)</td><td>PunjalaSunithaNarahari</td><td>Fee towards rendering legal advisory services in connection with the FINRA arbitration matter initiated to recover the monies with Merrill Lynch (New York, USA) including towards review of papers, preparing briefs, co-coordinating with local US attorneys engaged in the matter in connection with the arbitration and other related matters, participating in the meeting with conciliator towards arriving at an acceptable ‘settlement’ of the dispute and generally providing any advise/legal services in connection herewith.
Evidence
<table>
<tr><th>Sr. No.</th><th>Nature of evidences</th><th>pages of Paper Book</th></tr>
<tr><td>i)</td><td>Copy of invoice of PunjalaSunithaNarhari</td><td>153 – 154</td></tr>
<tr><td>ii)</td><td>Copy of Form No. 16A of PunjalaSunithaNarahari</td><td>190 – 191</td></tr>
<tr><td>iii)</td><td>Copy of write-up explaining issues with Merrill Lynch and role of the team of professionals and correspondence with Merrill Lynch and there council from/to Adv. PunjalaSunithaNarhari on the dispute.</td><td>261 – 274</td></tr>
</table></td><td>20,00,000</td></tr>
</table>

<table>
<tr><td>iii)</td><td>Anita &Gadia</td><td>Professional charges for service rendered on accounting, advisory and tax matters during the financial year 2014-15
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of invoices of Anita &Gadia Chartered Accountants=</td><td>156 – 167</td></tr><tr><td>ii)</td><td>Copy of Form No. 16A Anita &Gadia</td><td>192 – 199</td></tr><tr><td>iii)</td><td>Copy of write-up explaining issues with Merrill Lynch and role of the team of professionals and correspondence with Merrill Lynch and there council from/to Adv. PunjalaSunithaNarhari on the dispute.</td><td>261 – 274</td></tr></table>Total (A)</td><td>88,56,777

2,20,92,777</td></tr>
<tr><td>iv)</td><td>Tour & Travelling expenses of advisors to US for settlement with Merrill Lynch</td><td>Air fare &Mediclaim policy
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of invoices of Hopp worldwide Excursions Ltd.</td><td>168 - 171</td></tr></table>Hotel Accommodation
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of invoices of Hopp worldwide Excursions Ltd.</td><td>172 - 173</td></tr></table>Forex Purchase
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of invoices of P.S. Forex& Travels (P) Ltd.</td><td>174 - 175</td></tr></table>Total (B)</td><td>5,59,447

1,61,718

1,25,280

8,46,445</td></tr>
<tr><td>v)</td><td>Other expenses</td><td>Annual account fees (USD 1523@62.26) charged by Merrill Lynch
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of statement of Merrill Lynch for fee charged by them.</td><td>176 - 181</td></tr></table>Remittance transfer fees (USD 90 @62.26) charged by Merrill Lynch
Evidence<table><tr><td>Sr. No.</td><td>Nature of evidences</td><td>pages of Paper Book</td></tr><tr><td>i)</td><td>Copy of statement of Merrill Lynch for fee charged by them.</td><td>182 - 187</td></tr></table>Total (C)</td><td>94,823

5,600

1,00,423</td></tr>
<tr><td>vi)</td><td></td><td>Grand Total (D) (A+B+C)</td><td>2,30,39,645</td></tr>
</table>

7. Considered the rival submissions and material placed on record. We observe that the Ground no.1 raised by the revenue in respect of disallowance of Rs. 2,30,36,645/- u/s 57(iii) of the Act, for the reason that the expenditure claimed by the assessee is more than 75% of the fees or income earned by the assessee. There is no correlation to the income earned under the head income from other sources. In our view, the issue is covered by the judgment of Hon'ble Apex Court in the case of Rajendra Prasad Moody (115 ITR 519) wherein it was specifically held that once genuineness of an expenditure was not disputed by the Assessing Officer, disallowance cannot be made in terms of the provisions of section 57(iii) of the Act. The relevant findings reads as under:

> *"It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meager, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1000/-, if there is income of even Re. 1/-, the expenditure would be deductible and there would be resulting loss of Rs. 999/- under the head 'Income From Other Sources'. But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the Legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the*

resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate profit or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of section 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.

It is true that the language of section 37(1) is a little wider than that of section 57(iii), but we do not see how that can make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and in fact, contrary to such language.

This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand where the learned Law Lord said: "Expenditure in the course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense."

8. We observed that the learned CIT(A) followed the judgment of Apex Court in the case of Rajendra Prasad Moody (supra) and deleted the disallowance. The relevant portion of the learned CIT(A)'s decision on the issue is reproduced below:–

"12 The issue is squarely covered by the order of the Hon'ble Apex Court in the case of Rajendra Prasad Moody [1978] 115 ITR 519 (SC), wherein it was specifically held that once genuineness of an expenditure was not disputed by the Assessing Officer, disallowance cannot be made in terms of the provisions of section 57(iii) of the Act. The underlying principle of netting logically gets attracted as no prudent businessman would allow taxation of the interest income de-hors the expenditure incurred for earning such income. Therefore it was incumbent upon the AO to prove otherwise before making any disallowance.

12.1 In the present case, authenticity of expenditure was never doubted by the AO. On the other hand, from the submissions made by the appellant, it clearly appeared that there were indeed legal issues and disputes involved with the foreign bank and the investments of the appellant. This necessitated hiring of professionals as a matter of commercial expediency. The core fact was never disproved or contradicted by the AO. In fact, the AO, in the final anaylsis, disallowed impugned professional charges of Rs. 2,30,36,645/- holding the same to be disproportionately high:

4.5 On perusal of the submissions given by the AR, it is found besides, it is worth noting that to ensure the inflow of Rs. 2,90,32,094 crore back into the country and in the safe custody of the assessee, the financial advisor charged a fee of Rs. 2,30,36,645/- crore, i.e. more that 75% fee/commission. Nowhere in the world is there a parallel for such high fees/charged for any financial advisor or consultant for any service provided. Normally, fees/commission for such services range from 1.5% of the deal value. Thus, if we apply the test of preponderance of probability, such a transaction appears to be inconceivable and unfathomable. A 75% fee for such service would make the financial advisor akin to a goon, and not a consultant, who says to the assessee that he should part with 75% of his funds simply because the alternative is to have none of it with him at all.

12.2 Manifestly, there was no finding by the AO to dislodge the claims of expenses either on the ground of genuineness or from the angle of commercial expediency. In final analysis, it boiled down to AO's conviction regarding percentage of expenditure, which the appellant was supposed to incur. Thus, addition made was neither backed by facts nor had any legal support.

12.3 In view of the elaborate discussion made above, addition of Rs.2,30,36,645/- made by the Assessing Officer is not sustainable. Accordingly, Grounds of Appeal at 3 is answered in favour of the appellant."

9. Since the issue before us is mutatis mutandis squarely covered by the judgment of Apex Court in the case of Rajendra Prasad Moody (115 ITR 519), in our view, the AO has not disputed the fact that the assessee has legal dispute pending which is closely related to earning of income during the year. Ld CIT(A) has passed a speaking order addressing the issues involved in this case. we respectfully following the aforesaid findings, uphold the order of the learned CIT(A) on this issue by dismissing the ground 1 raised by the Revenue.

10. Ground 2 raised by the revenue relate to disallowance of Rs. 2,10,000/- u/s 37(1) of the Act. The learned CIT(A) deleted the disallowance by holding as under:

"13 Coming to the second ground of appeal it was noted that the addition of Rs. 2,10,000/- was made by the AO u/s 37 of the Act on the basis of estimation. No specific bill or voucher was singled out to buttress the inference drawn and conclusion reached. In contrast, only requiring u/s 37 of the Act is that the expenses, which are not capital or personal in nature, can be claimed for the purpose of the business or profession. There is no need to demonstrate that a certain expense relates to a particular income in order to claim such expense. However from the discussion made above, it is clear that the appellant, in more than one we, has substantiated necessity and genuineness of expenses claimed.

13.1 It is also of common knowledge that whenever any estimation is required to be made, lot of guesswork gets involved. Therefore, various courts have held on a regular basis that conjecture and surmise cannot serve as the bedrock of any disallowance. Respectfully following such coordinated judgments, AO is directed to delete the impugned addition. Accordingly, Ground of Appeal at 2 is answered in favour of the appellant."

11. On careful consideration and after hearing both the parties we find that the AO has made an adhoc disallowances on this expenditure without pointing out any element of such expenditure. It is noted that only requiring u/s 37 of the Act is that the expenses, which are not capital or personal in nature, can be claimed for the purpose of the business or profession. There is no need to demonstrate that a certain expense relates to a particular income in order to claim such expense. However from the discussion made above, it is clear that the appellant, in more than one we, has substantiated necessity and genuineness of expenses claimed.. The CIT(A) in his order has rightly deleted the adhoc disallowance made in this regard. The order of CIT(A) in this regard is upheld and ground no.2 of the appeal of the revenue is rejected.

12. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 9th day of October, 2024.

Sd/-	**sd/-**
(VIMAL KUMAR)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 09.10.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI