

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA Nos.6573/Del/2013
Assessment Years: 2009-10**

The Asstt. Commissioner of Income Tax, Central Circle-09, Jhandewalan, New Delhi	Vs.	M/s Nau Nidh Overseas Pvt. Ltd. D-6/13, Vasant Vihar, New Delhi-110067
		PAN :AABCN3865G
(Revenue)		(Assessee)

Assessee by	Dr. Rakesh Gupta, Adv. & Sh. Somil Agarwal, Adv.
Revenue by	Ms. Baljeet Kaur, CIT-DR

Date of hearing	11.11.2024
Date of Pronouncement	26.11.2024

ORDER

PER BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

The appeal by the Revenue is directed against the order of the Ld. CIT(A)-XXXII, dated 29.09.2013, pertaining to Assessment Year 2009-10.

2. The grounds of appeal raised by the Revenue are as under:-

“1. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the disallowance made by the AO u/s 37 amounting to Rs,1,80,83,585/-.

2. *The Commissioner of Income Tax (Appeals) erred in holding the insurance of notice u/s 153C is bad in law.*

3. (a) *The order of the CIT(A) is erroneous and not tenable in law on facts.”*

3. Brief facts of the case:- The assessee company, during the year under consideration has shown receipts of Rs.4,26,13,547/- under the head 'Brokerage, Business Promotions & Development Activities Receipts'. The assessee company filed its return of income for the assessment year 2009-10 u/s 139(1) of the I.T. Act, 1961 on 28.09.2009 declaring a total income of Rs.2,60,04,560/- .A search operation was undertaken by the CBI at the residential premises of the director of the assessee company namely Sh. Jatinder Pal Singh on 22.04.2010 at D-6/13, Vasant Vihar, New Delhi-110057, and cash of Rs.2 crores was seized by the CBI. Thereafter, on the basis of the information provided by the CBI, a search operation u/s 132 of the I.T. Act, 1961 was carried out at the residential premises of Sh. Jatinder Pal Singh, Director of the assessee company, by the Directorate of Income Tax (Inv.) on 22.01.2010 itself and a cash of Rs.15,74,000/- was found, out of which Rs.15,00,000/- was seized by the Department. Statement of Sh.Jatinder Pal Singh was recorded u/s 132 (4) of the I.T. Act, 1961. In reply to question nos. 7 and 27 Sh. Jatinder Pal Singh replied as under:

In answer to question no. 7

"about Rs 15 lacs is at my residence and Rs 2 crores in my office which is located in the same plot on ground floor. Out of Rs 15 lacs, a sum of Rs 10 lacs belongs to company namely Navindh overseas (P) Ltd. and Rs 5 lacs is my personal. Rs 2 crores I have received as advance with regard to my agricultural land at Faridabad where I intended to sell the land in small plots".

In answer to question no. 27

"The Cash belongs to both the companies and my personal cash but the computer on which books of A/c are maintained have been seized by CBI and physical print out have not been taken hence I am not a position to explain the same".

3.1. On the basis of the above statement of Sh. Jatinder Pal Singh that out of cash Rs.15 lakh, a sum of Rs.10 lakh belonged to the assessee company, the Assessing Officer recorded a satisfaction note and issued notices u/s 153C of the I.T. Act, 1961 for the assessment years 2005-06 to 2010-11 and served the same upon the assessee. This was done pursuant to the order of the CIT-V, New Delhi vide F.No. CIT-V/centralization/2010-11/1067 dated 17.08.2010 whereby the jurisdiction of the assessee's case was transferred to the present Assessing Officer, Central Circle-09, New Delhi. In response to the notice u/s 153C, the assessee filed a letter dated 19.02.2013 stating that the return filed u/s 139(1) for the assessment year 2009-10 on 28.09.2009 be treated as return filed u/s 153C of the I.T. Act, 1961. Thereupon, notices u/s 143(2) and 142(1) were issued and served upon the assessee. Thereafter, the Assessing Officer completed the assessment in terms of an order u/s 143(3) r.w.s 153C of the I.T. Act, 1961 at a total income of Rs.4,40,88,150/- as against the returned income of Rs.2,60,04,560/- wherein an addition of Rs.1,80,83,585/-

was made by disallowing the entire expenses debited to P&L account u/s 37 of the I.T. Act, 1961.

3.2. The AO made the disallowance of Rs.1,80,83,585/- on the ground that no supporting evidence in respect of expenses claimed has been furnished by the assessee. The AO also observed that the assessee did not cooperate during the search and post search enquiries. He further noted that during the course of search in the statement recorded, the assessee failed to furnish any information/evidence, when the Director of the company Shri Jatinder Pal Singh, was asked to furnish evidences of services provided and the name and addresses of the companies to whom such services were provided. The AO further held that that the assessee had no infrastructure/facility or competence to provide services and the expenses claimed have not been incurred by the payers for the purposes of the business. The relevant discussion by the AO on page-2 of the assessment order is reproduced as under:-

“During the course of search the assessee was asked to produce copies of ITR & books of accounts. The assessee was not able to furnish the documents required. Further, during the course search enquiries the assessee was again asked to furnish copies of ITR & final accounts. From copies of the final accounts filed, it was found that the assessee has debited various expenses to P&L A/c. The assessee was asked to furnish evidence in support of the expenses debited. However, evidence was furnished regarding the expenses debited to P&L A/c. The AR of the assessee stated that Sh. Jatinder Pal Singh, Director of the company is in judicial custody and therefore cannot produce the necessary details/documents as required. Even after the release of the Director on bail, the AR or the assessee have not made any

affords to furnish the required information. It appears that the assessee have no evidence to substantiate the expenses debited to P&L A/c.

Further, during the course of assessment proceedings, the assessee vide notice u/s 142(1) dated 14.02.2013, was asked to furnish details of various expenses debited to P&L A/c: The assessee vide letter dated 14.03.2013 has furnished ledger accounts of various expenses debited to P&L a/c. The assessee has claimed to carry out his business activities and incurred expenses to run its business. The assessee has claimed to have receipts the income for services rendered to various parties. No supporting evidence in respect of expenses claimed or income earned have been furnished by the assessee. The assessee has not cooperated during the search and post search. During the course of search in the statement recorded, the assessee was asked to furnish evidences of services provided and the name & addresses of companies to whom such services have been provided. The assessee failed to furnish any evidences. Further, during the post search enquiries it has been established that the assessee has not rendered any kind of services to various parties. The consideration received from various parties is not for any services rendered but represents payments not for the purposes of business. The payments received are for the services other than what is mention in the bills raised or as recorded in the books of accounts of various parties. The assessee had no infrastructure/facility or competence to provide such services. The payments have been made for extraneous consideration i.e. these expenses have not been incurred by the payers for the purpose of the business.

In the absence of any evidences supporting the fact that the expenses debited to P&L a/c are indeed for the purpose of business, the expenses of Rs.1,76,38,084/-are disallowed u/s 37 of the I.T. Act and added to the income of the assessee for the year under consideration.”

4. Against the above order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) called for the assessment record of the appellant and the appraisal report in the case of Shri Jatinder Pal Singh. The Ld. CIT(A) noted that the assessee had filed copy of audited

balance sheet, profit & loss account along with copy of audit report u/s 44AB of the Act, wherein, the auditors had duly certified the nature of business for profession of the appellant is of 'Business Auxiliary Service'. The ld. CIT(A) noted that on perusal of the profit & loss account, it was seen that apart from business income of Rs.1,52,38,547/-, the assessee had also shown commission on land deals and professional and brokerage fee at Rs.2,30,00,000/-. Further, the ld. CIT(A) noted that the total receipts declared by the assessee was Rs.4,26,13,547/- on which a net profit of Rs.2,45,29,961/- was declared. The ld. CIT(A) noted that total expenditure incurred for earning of this income from various sources debited to the profit & loss account was Rs.1,80,83,586/- and further noted that the assessee had filed complete details of almost all the expenses debited to the P & L Account. The ld. CIT(A) further noted that out of total expenses of Rs.1,80,83,586/- major expenditure was in respect of salary and accommodation charges amounting to Rs.1,21,12,000/- and Rs.22,65,674/- respectively.

4.1. The Ld. CIT(A) held that the disallowance was made without bringing on record any adverse material. The Ld. CIT(A) took note of the fact that during the post search enquiries, summons u/s 131 of the Act was issued by the Investigation Wing to all the parties to whom the assessee rendered services and verified the payment made by them to the assessee company. The Ld. CIT(A) held that no incriminating

document was found regarding any expense incurred by the assessee company which would form the basis of disallowance. The ld. CIT(A) further took note of the fact that the assessee company was incorporated on 13.09.1995 and since then never in the past any such disallowance of entire expenses debited to P & L Account was ever made, which according to her was against the principles of consistency, which cannot be justified at all. Finally, the ld. CIT(A) held that the presence of receipts of Rs.4,26,13,547/- on the credit side of the P & L Account of the assessee justify the claim of deduction of expenses amounting to Rs.1,80,83,586/- and thereby deleted the said addition. The relevant discussion by the Ld. CIT(A) in para no.10 to 10.3 of her order is reproduced as under:-

“10. I have gone through the facts of the case, and grounds of appeal, findings of the Assessing Officer in the assessment order, written submissions of the appellant and considered them. I have also called for the assessment record of the appellant for the year under consideration and the appraisal report in the case of Sh. Jatinder Pal Singh and perused the same and adjudicated this issue on merit. On perusal of the assessment record, I find that the appellant has filed the copy of audited balance sheet, profit and loss account etc., along with a copy of the audit report under section 44AB of the IT Act 1961 of R.C. Chadda & Company, Chartered Accountants in form no 3CD.1 have perused the contents of form CD wherein the Auditors have duly certified that the nature of business or profession of the appellant is that of "Business Auxiliary Service". On perusal of the P&L account, it is seen that the appellant had shown total receipts from business of Auxiliary Services at Rs. 5,29,64,783/-, on which a net profit of Rs. 3,53,26,698/- was declared. The total expenditure incurred for earning of this income which was debited to the P&L account was Rs. 1,76,38,084/-. I find that the appellant had filed complete details of almost all the expenses debited to P&L account. On perusal of the details of these expenses, it is seen that out of total expenses of Rs. 1,76,38,084/, major expenditure was in respect of salary, business promotion, development,

accommodation and tours and travels amounting to Rs.1,09,92,000/- and Rs.20,26,304/- respectively.

10.1 In the instant case I find that the Assessing Officer has made the disallowance on mere surmises and conjecture and on some vague observations without bringing on record any adverse material. It is beyond imagination, that a person can earn such a huge income without incurring any expenditure. The AO did not give a categorical finding to say that if the expenditure was not incurred by the appellant company, in rendering his business activity then the nature of such income where expenditure incurred is not allowed. It is also a point to mention that during the post search enquiries, the Investigation Wing issued summons u/s 131 to all the parties to whom the appellant rendered services and verified the payments made by them to the appellant company. In response to the same, all the parties confirmed that payments were made in lieu of the services provided by the appellant company. However, on perusal of the same, the Investigation Wing found that the services rendered as described in the bills raised by the appellant company and that of the parties who sought services of the appellant did not tally or match and were contradictory. In these circumstances, the AO did not carry out an independent enquiry regarding the unmatched services that were rendered and the actual purpose of making these payments to the appellant company. The AO also did not procure the bank statement of the appellant company, which would have reflected the transactions and its purpose. No books of accounts of the appellant were available to verify the expenses as these were seized by the CBI. No effort was made by the AO to avail a copy of the seizure memo and copies of the documents seized by the CBI from the residence of Sh. Jatinder Pal Singh that would be relevant for the tax purposes in the case of the appellant company. No incriminating document was found regarding any expense incurred by the appellant company which would form the basis of disallowance. Therefore, no adverse independent material was brought on record by the AO to disallow the expenses u/s 37 of the I.T. Act, 1961. It is also pertinently mentioned here that the appellant company was incorporated on 13.9.1995 and since then never in the past any such disallowance of entire expenses debited to P&L a/c was ever made. Thus, the action of the Assessing Officer in disallowing the entire expenditure during the year is against the principles of consistency which cannot be justified at all. Further, the presence of business receipts amounting to Rs.5,29,64,783/- on the credit side of the P&L account of the appellant justify the appellant's claim of deduction of expenses amounting to Rs.1,76,38,084/-.

10.3 Therefore, in view of the above facts, I hold that there was no justification for making the impugned disallowance of the

entire expenditure debited to the P&L Account without giving any adverse finding against the claim. Accordingly the addition of Rs. 1,76,38,084/- made by the Assessing Officer on account of disallowance of expenses u/s 37 of the IT Act 1961 is hereby deleted. This ground of appeal is allowed in favour of the appellant.”

5. Against the above order, the Revenue is in appeal before us.
6. During the hearing, the Ld. DR submitted that the assessee did not produce any evidence except for copy of ledgers in support of the claim of expenses amounting to Rs.1,80,83,586/-. She, however, fairly admitted that the salary amounting to Rs.1,19,20,000/- out of total salary debited amounting to Rs.1,21,12,000/- was duly offered by Shri Jatinder Pal Singh, Director of the assessee company, in his return of income and offered for taxation and the same was not contested. However, she did not agree with the findings of the ld. CIT(A) on page-19 that the AO did not carry out any independent enquiry regarding unmatched services and the actual purpose for making these payments and did not procure the bank statements of the company and that no effort was made by the AO to obtain copies of documents seized by the CBI from the residence of Shri Jatinder Pal Singh, Director of the assessee company. With respect to these observations and finding of the Ld. CIT(A), she submitted that the same was in contradiction with the decision of the Hon'ble Delhi High Court in the case of Jansampark Advertising & Marketing P. Ltd. 275 ITR 373 and further submitted that the onus was on the assessee to submit the necessary evidences in support of its claim of expenses debited in the

profit & loss account and claimed by it in its computation of income. She further submitted that even before the Ld. CIT(A), the assessee did not submit any detail or produce any verifiable evidence in support of its claim regarding the balance expenses other than salary debited in the profit & loss account. She also submitted that the assessee in its written submission filed before the ld. CIT(A) (placed at page no.1 to 7 of the paper book) at page-7 submitted that if required that the assessee was willing to produce the complete record relating to business receipts and claim of expenses for verification in order to establish that these expenses are related to business activities and permissible under the law. In view of these facts, she forcefully submitted that in light of the above decision of the Hon'ble Delhi High Court (supra) and the submission of the assessee to produce the complete record relating to business receipts and claim of expenses for verification in order to establish that these expenses are related to business activities, the order of the Ld. CIT(A) may be set-aside and the matter may be remanded back to the AO directing the assessee to furnish the necessary evidences in support of the expenses other than salary of Rs.1,91,20,000/- debited in the profit & loss account.

7. On the other hand, the Ld. AR relied upon the order of the Ld. CIT(A). The ld. AR further submitted that the assessee in its computation of income page no.22 and 23 submitted that the assessee *suo-moto* had disallowed expenses being of personal nature amounting

to Rs.9,00,000/-, along with depreciation debited in P & L Account- Rs.12,84,362/- and interest on late deposit of TDS Rs.1,54,380/-.

8. We have considered the rival submissions and perused the material available on record. The details of the expenditure amounting to Rs.1,80,83,585/- as debited in the P & L Account and its schedule in F, G, H & I as placed in paper book on page no.12 & 16 are reproduced as under:-

Expenditure :				
Cost of Sales				2,605,217.00
Personnel Expenses	F	12,143,921.00		265,270.00
Administration Expenses	G	2,684,302.26		3,228,490.00
Financial Charges	H	156,332.90		420.00
Selling & Distribution	I	1,810,775.00		257,154.00
Preliminary Expenses Written off		1,740.00		1,740.00
Preoperative Expenses Written off		2,153.00		2,153.00
Depreciation		1,284,361.56		127,921.00
		18,083,585.72		6,488,365.00

NAUNIDH OVERSEAS PRIVATE LIMITED			
Schedules Forming part of Profit & Loss Account for year ended 31.3.2009			
Particulars	Schedule	At at 31.03.2009 Amount	As at 31.03.2009 Amount
Personnel Expenses	F		
Salary		12,112,000.00	240,000.00
Staff Welfare		31,921.00	25,270.00
		<u>12,143,921.00</u>	<u>265,270.00</u>
Administration Expenses	G		
Accommodation Charges		2,265,674.60	-
Accounting Fee		18,000.00	18,000.00
Audit Fees		19,303.00	19,653.00
Car Insurance		150,215.00	-
Car Repair & Maintenance		96,291.00	79,985.00
Cartage		-	22,738.00
Electricity Expenses		15,600.00	14,400.00
Filing Fee		13,483.00	3,000.00
Postage		12,554.00	10,347.00
Printing & Stationery		32,880.00	21,657.00
Professional Brokerage		-	3,000,000.00
Repair & Maintenance		-	19,220.00
Telephone Expenses		60,300.00	19,480.00
Misc Expenses		1.66	-
		<u>2,684,302.26</u>	<u>3,228,490.00</u>
Financial Charges	H		
Interest on T.D.S		154,380.00	-
Bank Charges		1,952.90	420.00
		<u>156,332.90</u>	<u>420.00</u>
Selling & Distribution Expenses	I		
Business Promotion		95,521.00	38,360.00
Conveyance		25,475.00	19,994.00
Tour & Travel		1,689,779.00	198,800.00
		<u>1,810,775.00</u>	<u>257,154.00</u>

9. On perusal of the above expenses on schedule F,G, H & I of the profit & loss account, other than expenses towards the 'Accommodation Charges-Rs.22,65,674/-' under the head 'Administrative Expenses', 'Business Promotion Expenses-Rs.95,521/-' and 'Tour & Travel Expenses-Rs.16,89,779/-' under the head 'Selling and Distribution Expenses', the other expenses are of routine nature and are acceptable. Further, on perusal of pages no.24 to 26 of the paper-book, it is seen that Shri Jatinder Pal Singh has offered an amount of Rs.1,19,20,000/- as salary income received from the assessee company. Further, the assessee company had disallowed depreciation debited in the P & L Account amounting to Rs.12,84,362/- and therefore the disallowance of the same by the AO is not justified. Similarly, the assessee company had disallowed interest on late deposit of TDS debited in the P & L Account amounting to Rs.1,54,380/- and therefore the disallowance of the same by the AO is not justified. Therefore, the claim of expenses amounting to Rs.1,38,40,611/- out of Rs.1,80,83,586/- is acceptable and to that extent the decision of the Id. CIT(A) is acceptable.

10. However, no evidence other than the ledger account of accommodation charges (Rs.22,65,674/-), business promotion expenses (Rs.95,521/-) and tour and travel (Rs.16,89,779/-) have been filed. Further, there are no details available in respect of the balance amount of salary amounting to Rs.1,92,000/- (Rs.1,21,12,000-

1,19,20,000/-). Apart from the ledger account, etc. other supporting evidences of these expenses are not available. This being the old matter and purpose will not be served in sending back to the AO and hence, we can estimate a reasonable disallowance. For computing the reasonable disallowance, we have to consider that the assessee itself has offered disallowance of Rs.9 lakhs and considering the same, out of total expenses of Rs.42,42,974/-, we restrict the disallowance of Rs.15 lakhs. Accordingly, the disallowance is restricted at Rs.15 lakhs . Ground no.1 of the appeal is partly allowed.

11. Ground No.2 of the appeal regarding challenging the proceedings u/s 153C of the Act is dismissed in view of the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs Nau Nidh Overseas Pvt. Ltd. [2017] 88 taxmann.com 665 (Del.) for AY 2011-12, wherein on similar facts, the Hon'ble Court upheld the proceedings u/s 153C of the Act.

12. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 26/11/2024.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Dated: November,2024.

Shekhar

Copy forwarded to:

1. Appellant

2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi