

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

**Before Sh. Satbeer Singh Godara, Judicial Member  
&  
Sh. M. Balaganesh, Accountant Member**

**ITA No. 8295/Del/2019 : Asstt. Year : 2015-16**

DCIT Central Circle-19, New Delhi-110055 (APPELLANT)	Vs	Oneworld Corporation Pvt. Ltd., A-4, G. T. Karnal Road Industrial Area, New Delhi-110033 (RESPONDENT)
<b>PAN No. AADCA8924F</b>		

**CO No. 82/Del/2022  
(in ITA No. 8295/Del/2019 : Asstt. Year : 2015-16)**

Oneworld Corporation Pvt. Ltd., A-4, G. T. Karnal Road Industrial Area, New Delhi-110033 (APPELLANT)	Vs	DCIT Central Circle-19, New Delhi-110055 (RESPONDENT)
<b>PAN No. AADCA8924F</b>		

**Assessee by : Sh. Gaurav Jain, Adv. &  
Ms. Bharti Sharma, Adv.  
Revenue by : Mr. Jaya Choudhary, CIT-DR**

<b>Date of Hearing: 25.11.2024</b>	<b>Date of Pronouncement: 27.11.2024</b>
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**ORDER**

**Per Satbeer Singh Godara, Judicial Member:**

This Revenue's appeal ITA No. 8295/Del/2019 and the assessee's cross objection CO No. 82/Del/2022 for A.Y. 2015-16 arise against the CIT(A)-27, New Delhi order dated 30.08.2019 passed in case No. 505/18-19, in proceedings u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case files perused.

3. We first come the relevant basic facts involved in the instant twin cases. There is hardly any dispute between the parties that the learned Assessing Officer's assessment framed in assessee's case on 31.12.2018 had *inter alia* disallowed/added alleged undisclosed income of Rs.4,27,77,757/- and disallowed expenditure claim of credit card payment amounting to Rs.9,78,197/- as not incurred wholly and exclusively for the purpose of the business u/s 37(1) of the Act. The assessee went in appeal wherein the learned CIT(A) has deleted the foregoing former addition and restricted the latter disallowance only to the tune of Rs.2,16,497/- which leaves both the parties aggrieved herein have been preferred the instant appeal as well as the cross objection raising the corresponding substantive grounds.

4. We now proceed to deal with the Revenue's first and foremost substantive ground that the CIT(A) has erred in law and on fact in admitting the assessee's additional evidence in violation of Rule 46A of the Income Tax Rules. We make it clear that there is no material in the case file which could suggest that any such additional evidence has been admitted in the lower appellate proceedings in violation of principle of natural justice as the Revenue's case sought to be made out before us. Rejected accordingly.

5. Now comes the foregoing substantive issue of undisclosed income addition amounting to Rs.4,27,77,751/- made in the assessee's hands in assessment and deleted in the CIT(A)'s order. Learned CIT-DR take such to assessment findings and submits that the Assessing Officer had made the impugned addition on the ground that the assessee had in fact diverted its profits to the Dubai based subsidiary namely M/s One World

FZE which had been incorporated on 06.01.2014 and closed on 26.04.2016. Ms. Choudhary case in light of the Assessing Officer findings is that the assessee had made sales/purchases of the various items namely sandalwood oil, rose sandal etc. with the existing common customers and as per the statement of the common director Sh. Arun Gupta, it was only a tactic to shift the profits taxable in India to a foreign jurisdiction and therefore, it had derived profit of AED2576973 to be taxed as its undisclosed income.

6. We are next taken to the CIT(A)'s detailed discussion deleting the impugned addition as under:

*"8.4 In view of the discussion made in the above para, it is held that the appellant has no intention to create foreign subsidiaries for the purpose of tax evasion. There were reasons of business expediency and business exp in view of the various factors discussed above. Due to unforeseen personal reasons of majority stake holders and unpleasant hurdles in business expansion, these subsidiaries were finally wound up. There is no bar on shifting of any existing business anywhere in the world, only the taxing sections/rules applied will change. Without prejudice, all the profits of foreign subsidiary have been brought in India and due taxes has been paid in India by the parent company, even much before the date of search, which itself proves that there was no intention to create paper subsidiaries for the purpose of tax evasion. The appellant has created subsidiaries for expansion and restructuring of its bonafide business.*

9. *On the basis of the discussion in the above para, it is held that M/s OWF is a separate legal entity formed under the law of UAE and the control & management of this subsidiary of the appellant company was in UAE. This fact has been even accepted by the AO in A.Y. 2016-17 and the case has been referred to TPO for determine the arms length price of transactions between the appellant company and M/s OWF considering it to be a separate legal Associate Enterprise. There is no change in constitution or manner of operations of the subsidiary M/s OWF to consider it as part of parent company in one assessment year and as separate legal entity in the other assessment year. As the Board meetings as well as operations of the subsidiary company M/s OWF were all being handled from UAE, as per section 6(3) of the I. T. Act, 1961, the status of the subsidiary will be that of non-resident and any income of it received/accrued/arisen outside India is not taxable in India.*

*It is observed that the income of the subsidiary M/s OWF has arisen in UAE and is therefore not taxable in India as per the Indian Income Tax Act. Further the parent company has not only opened the subsidiary in UAE, but has tried to expand its operations in France, New Caledonia and USA through different routes. Thus the intention of the group to expand business international is very much visible from the various activities carried out by the group. There is no bar in shifting any business from one country to another country as per the laws existing in those countries. There is no law in India which prohibits evasion. There were reasons of business expediency and business expansion in view of the various factors discussed above. Due to unforeseen personal reasons of majority stake holders and unpleasant hurdles in business expansion, these subsidiaries were finally wound up. There is no bar on shifting of any existing business anywhere in the world, only the taxing sections/rules applied will change. Without prejudice, all the profits of foreign subsidiary have been brought in India and due taxes has been paid in India by the parent company, even much before the date of search, which itself proves that there was no intention to create paper subsidiaries for the purpose of tax evasion. The appellant has created subsidiaries for expansion and restructuring of its bonafide business."*

7. We wish to make it clear that there is no denial from the Revenue side so far as all the relevant facts taken note of in the lower appellate discussion extracted hereinabove are concerned. All what the Revenue seeks in the instant appeal is that the impugned sum represent the assessee's undisclosed income since the same has been derived by way of layering the transaction after establishing the Dubai based AE. We are of the considered view in this factual backdrop that once the corresponding income already stood taxed @15% much before the date of search (supra), the same could hardly be taken as an income which remained undisclosed as the Revenue stand before us. This is indeed coupled with the fact that there is already specific provision to deal with the expenditure items involving excessive payment than the market rate i.e. section 40A(2) wherein the learned lower authorities can indeed make a disallowance of the corresponding excess rates paid which is not the case before us at all. We accordingly are of the considered view in light of the CIT(A)'s findings that the

Revenue instant former substantive ground has no merit. The same stand declined.

8. Next comes the common issue between the parties regarding credit card expenditure disallowance of Rs.9,78,197/- made in the course of assessment and restricted to Rs.2,16,497/- only in the lower appellate proceedings. Both the learned representative reiterate their respective stands during the course of hearing. Learned counsel's case is that such a disallowance could not be made in the hands of the company. He fails to dispute the clinching fact that it was the assessee director Sh. Amit Gupta's father namely Sh. Ved Prakash Gupta who had admittedly used his credit card(s) for the purpose of incurring the business expenditure forming subject matter of disallowance. We further do not see as to whether all these payments involving four credit cards had been used wholly and exclusively for the purpose of the business. The facts also remains that there is no assessment discussion which could reject each and every payment as not satisfying the rigor of section 37(1) of the Act.

9. Faced with this situation, we are of the considered view that a lump sum disallowance of Rs.50,000/- only will be just and proper with a rider that it shall not be treated as a precedent. We further make it clear before parting that the assessee's plea that the impugned expenditure could not be disallowed in a company's hand ought to be rejected only for not having satisfied the statutory conditions section 37(1) of the Act. The assessee gets part relief of Rs.1,66,497/- in other words.

10. This Revenue's corresponding third substantive issue fails so as it's main appeal ITA No. 8295/Del/2019 and assessee's

cross objection CO No. 82/Del/2022 is partly accepted in foregoing terms.

11. No other ground or argument has been pressed before us.

12. This Revenue's appeal ITA No.8295/Del/2019 is dismissed & the assessee's cross objection CO No. 82/Del/2022 is partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order Pronounced in the Open Court on 27/11/2024.

Sd/-

**(M. Balaganesh)**  
**Accountant Member**

**Dated: 27/11/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Satbeer Singh Godara)**  
**Judicial Member**

**ASSISTANT REGISTRAR**