

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

**Before Sh. Satbeer Singh Godara, Judicial Member  
&  
Sh. Pradip Kumar Kedia, Accountant Member**

**ITA No. 78/Del/2017 : Asstt. Year : 2012-13  
ITA No. 5755/Del/2019 :Asstt. Year : 2012-13**

Sh. Sunil Kumar Jain, Prop. M/s Nirmal International, Village Faridpur, Masd Public School Road, Panipat, Haryana-132103 (APPELLANT)	Vs	CIT(A), Karnal, Haryana-132001 (RESPONDENT)
<b>PAN No. ABBPJ4056B</b>		

**Assessee by : None  
Revenue by : Sh. Sahil Kumar Bansal, Sr. DR**

<b>Date of Hearing: 10.12.2024</b>	<b>Date of Pronouncement: 20.12.2024</b>
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**ORDER**

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

These assessee's twin appeals ITA No. 78/Del/2017 and ITA No. 5755/Del/2019, both for Assessment Year 2012-13, arises against the CIT(A), Karnal's as many orders dated 21.10.2016 and 24.04.2019 passed in case No. 48/PPT/2014-15 and IT/24/E/PPT/2018-19, in proceedings u/s 143(3) and 271(1)(c) of the Income Tax Act, 1961 (in short "The Act").

2. Case called twice. None appears at the assessee's behest. We accordingly proceeded *ex-parte* against him.

3. The assessee's "quantum" appeal ITA No. 78/Del/2017 raises the following substantive grounds:

*"1. That the order of Id CIT Appeals, to the extent of various additions and disallowances is illegal, perverse and unjustified being without proper appreciation of the*

*facts and circumstances, Statutory provisions, Trade practices, and the explanations and evidences filed and on record.*

2. (a) *That the Id CIT Appeals, is not justified in making disallowance amounting to Rs. 27,77,825/- on account of manufacturing expenses incurred on account of labour charges under the facts and circumstances of the case.*

(b) *Without prejudice to above the appellant disputes the quantum of disallowance as highly excessive.*

3. (a) *That under the facts and circumstances of the case the CIT Appeals, is not justified in making disallowance u/s 40(a)(i) of Income Tax Act, 1961 on account of payment made to Non-Resident for travelling, Professional/Managerial Services amounting to Rs. 2,86,915/- on account of professional and managerial services to exhibit its products in "Domotex" which is an internationally acclaimed textile fair organized in Germany.*

(b) *Without prejudice to above the appellant disputes the quantum of disallowance as highly excessive.*

4. (a) *That under the facts and circumstances of the case the CIT Appeals, is not justified in making disallowance of interest of Rs. 2,10,948/- in respect of investment in assets not put to use during the year ignoring that the assets had no connection with interest paid and the same having been purchased out of with interest paid and the same having been purchased out of interest free advances and thus the provisions of proviso to section 36(1)(iii) of the Income Tax Act, 1961 are applicable to the present case.*

(b) *Without prejudice to above the appellant disputes the quantum of disallowance as highly excessive.*

5. (a) *That under the facts' and circumstances of the case the CIT Appeals, is not justified in making disallowance u/s 40(a)(ia) of Income Tax Act, 1961 for non deduction of TDS on interest paid amounting to Rs.3,80,962/- to two companies.*

(b) *Without prejudice to above the appellant disputes the quantum of disallowance as highly excessive.*

6. (a) *That under the facts and circumstances of the case the CIT Appeals, is not justified in making disallowance of amounting to Rs. 73,711/- on various*

*business expenses without appreciating the fact that the appellant himself has disallowed 1/10<sup>th</sup> of such expenses voluntarily in its Income Tax Return for the year under appeal.*

*(b) Without prejudice to above the appellant disputes the quantum of disallowance as highly excessive."*

4. We advert to the first and foremost issue herein disallowance of manufacturing expenses amounting to Rs.27,77,825/- made in both the lower proceedings. This assessee is admittedly the sole proprietor of M/s Nirmal International manufacturing and exporting of carpet, bath mats etc. It is evident from a perusal of the assessment discussion from para 3 page 2 onwards that the learned Assessing Officer went on to compare the assessee's corresponding manufacturing expenses in preceding A.Y. 2011-12 vis-à-vis percentage thereof with those relevant previous year and sought clarification *qua* the variation(s) therein. The assessee explained that the corresponding expenditure items had witnessed an increase in the impugned assessment year which failed to evoke the Assessing Officer concurrence who made the impugned disallowance citing various failures on assessee's part to plead and prove the relevant increase in the manufacturing expenses. All this led to disallowance of Rs.27,77,825/- in question.

5. The CIT(A) has affirmed the impugned disallowance as follows:

*On going through the assessment order, the main observations of the AO can be summarized as under:-*

*a) The AO has observed that on going through the manufacturing expenses claimed by the assessee, it was observed that there was a disproportionate increase in expenses claimed, compared to the preceding year. On going through the bills and vouchers, it was observed that most of the expenses*

*under some of the Heads have been incurred in cash. The assessee was asked to provide details and supporting evidences to explain and substantiate the increase in these expenses as well as also authenticate as to why the expenses have been incurred in cash and also whether the payments were justified for business purposes.*

*b) On Page 6 of the assessment order, the AO has summarized the reasons for doubting the huge increase in some of the expenses and inadequate replies filed by the assessee to explain the increase in expenses. It was observed that the cash expenses under these Heads were not supported with evidence of identity, ESI and PF had not been deducted from the payment to the workers and no proper explanation was provided to support these expenses.*

*c) The AO has therefore observed that even after considering the various arguments of the assessee regarding inflation and proportionate increase in expenses due to other reasons, the AO observed that the excessive payment amounted to Rs. 48,26,759/-. However, benefit of Rs. 20,48,934/- was given by the OA against various explanations filed by the assessee and only Rs. 27,77,825/- was added on this account.*

### **3.2 A.R. Submissions**

*During the course of appellate proceedings, the AR of the appellant made the following submissions:-*

*That the manufacturing expenses incurred on account of labour charges has been increased due to increasing in the production of carpets, bathmats/rugs and durries.*

*That production of bathmats/rugs and durries has almost doubled as compared to the last year. The detail for the production of carpets, bathmats/rugs and durries is as under: -*

<b>F.Y.</b>	<b>Carpets (in sq. mtrs)</b>	<b>Bathmats/rugs and durries</b>
2011-12	175214	2161476
2010-11	171849	1016385

*That there are local sales for the A.Y. 2012-13 which was not there in the previous year to the extent of more than Rs. 3 Crores having less sales value as*

*compared to the Export sales value i.e. wherein profits are less in sales. Therefore the value of the production as calculated by the AO has not increased in comparison to increase in the production quantity qua the expenses. Thus, the allegation of the AO that why there is not much change in terms of value is erroneous.*

*That furthermore the increase in expenditure was also due to increase in the wage rate on year to year basis as per inflation amounts which leads to increase in manufacturing expenses incurred on account of labour charges during the year under dispute.*

*That the copy of wages sheet for the A.Y. 2012-13 has already been submitted to the AO for the verification of the wages paid to the labour for the production of carpets, bathmat/rugs and durries. Copy of wage sheet are enclosed herewith while originals are hereby produced for your kind perusal.*

*Furthermore, as per the allegation of the Ld. AO that appellant has not deducted any PF/ESI out of the alleged payments to the labourers which is not correct since wherever applicable the same has been duly deducted as per copy of PF/ESI account.*

*Also, disallowance made by the Ld. AO on the basis previous year percentage is erroneous and highly excessive without any cogent reason and without appreciating various direct factors and reasons explained herein above."*

*The AR has primarily argued that there was no justification for making the disallowance based on earlier years expenses since there is change in the nature of sales and business activities in this year compared to earlier year. It was also submitted that proper records of wage payments were available and the disallowance made by the AO was not justified.*

### **3.3 Findings**

*After going through the facts and submissions, it is observed that the AO has made elaborate analysis of the nature of expenses under this Head compared to the earlier year. At the same time, the AO has particularly pointed out that there was no reason to make most of these payments in cash. The verifiability of many search expenses was also not established. The AO has already given credit for the various arguments*

*put forward by the assessee and only after considering these arguments the addition has been made.*

*On the other hand, the AR has only made general submissions without providing any submissions or documents to controvert the findings and observations of the AO. Accordingly, this Ground of the appellant is dismissed."*

6. Learned departmental representative vehemently supports the impugned disallowance on the ground that the assessee had indeed been afforded adequate opportunities of hearing to explain the impugned increase. We see no merit in the Revenue's instant arguments once it is evident to us the learned Assessing Officer had predominantly disallowed these manufacturing expenses by taking note of the difference in percentage only (supra) than pinpointing any specific error in the corresponding audited books of account. Meaning thereby that his impugned action is nothing but *prima facie* based on conjecture and surmises which is not sustainable in law. We accordingly accept the assessee's instant first and foremost substantive ground grievance seeking to delete manufacturing expenditure disallowance of Rs.27,77,825/- in very terms.

7. Next comes the second issue between the parties regarding disallowance of assessee's various travelling, professional and managerial expenditure of Rs.2,86,915/-; paid to non-resident, made by the Assessing Officer and upheld in the CIT(A)'s detailed discussion as under:

f) With regard to the payments made to Messee Frankfurt, the details of disallowance are as under:

Sr. No.	Particulars	Total Amount Paid	Allowed by AO	Disallowed by AO
1	Hall space charges (in Euro)	11,685	11,685	-
2	Early Bid Discount	(285)	-	285
3	Marketing Fees i.e. Meon Boards, Pamphlets, Publishing of brand names in the fair booklet (in EURO)	1,178	-	1,178
4	Total (in Euro)	12,578	11,685	893
5	Prepayments for Customizing Services (in EURO)	1,140	—	1,140
6	Grand Total in EURO	13,718	11,685	2,033
7	Currency Rate	69.76	69.76	69.76
8	Total Payment in INR	9,57,000	8,15,173	1,41,826

*The nature of above payments have been considered as professional/managerial in nature to be covered under fee for technical services by the AO.*

*Keeping in view the payments which includes media package, marketing fees and other services, since the details of these expenses have not been provided by the appellant and have also not been examined in detail to establish that there was involvement of technical personnel for These services. The element of technical services can only be partly true since most of these services related to exhibition expenses. Accordingly, 30% of these expenses are being estimated as being for technical services and the provisions of Section 40(a)(ia), to that extent are upheld. Accordingly, addition of Euros {(285 + 1,178 + 893 + 1,140 + 2,033 + 69.76 = Rs. 1,41,826/- in rupees); 30% is Rs.1,41,826/- = 42,547)}. Accordingly, Rs.42,547/- of disallowance is upheld.*

*g) The AR has also relied upon the decision of the Hon'ble ITAT, Delhi in the case of Brahmos Aerospace Pvt. Ltd. in ITA No. 966/Del/2015 dated 14.09.2016. The Hon'ble ITAT, Delhi has held in Para 7.1.that payments made to foreign entities in the nature of rent, advertisement and exhibition expenses were not chargeable to tax in India in view of the DTAA between the two countries. Accordingly, provisions u/s 195(1) were not attracted.*

*h) After careful consideration of the facts of the present case, the arguments of the AO regarding fee for*

*technical services and the nature of payments made to the non-resident parties, it is observed that only some components of the payments could be considered to be in the nature of managerial/technical or consultancy nature provided by technical or other personal as per the Article 12 of the DTAA between India and Germany. Keeping in mind the provisions of Section 9(vii) of the Income Tax Act, since items relating to construction, assembly, mining or like projects, cannot be considered as fee for technical services, the additions made by the AO is only being partly upheld as discussed above. The addition on account of Section 40(a)(ia) is therefore restricted to Rs. 2,86,915/- (2,44,368 + 42,547 = 2,86,915). These Grounds are treated as partly allowed."*

8. Mr. Bansal draws strong support from the above extracted lower appellate discussion that the impugned disallowance made u/s 40(a)(ia) of the Act involving assessee's payments made to non-residents deserves to be upheld. We are of the considered view that there is no indication either in the assessment order and in the CIT(A)'s lower appellate discussion as to whether the impugned expenditure claimed at the assessee's behest is taxable in the non-residents/recipients hands or not so as to attract TDS deduction under chapter-XVII of the Act, which forms a condition precedents in light of GE India Technology Centre P. Ltd vs. CIT (327 ITR 456). We thus see no reason to uphold the impugned disallowance of Rs.2,86,915/- which stands deleted accordingly.

9. The assessee's next substantive ground is that both the learned lower authorities have erred in law and on facts in invoking section 36(1)(ii) disallowance of Rs.2,10,948/- in respect of investment in asset not put to use. Mr. Bansal takes us the CIT(A)'s detailed discussion in paragraphs 5 to 5.3 that the assessee had purchased a plot at Barhi having value of Rs.21,09,484/- which was lying vacant than used for business purposes on the one hand whereas he had paid

interest on loans taken from the banks. We are afraid that such a course of action adopted by the learned revenue authorities wherein they have not even given any findings alleging to assessee to have diverted his interest bearing funds for non-business purposes, would itself render the impugned disallowance as not sustainable. We accordingly accept the assessee's instant third substantive grievance therefore.

10. Next comes the assessee's fourth substantive grievance that both the learned lower authorities have erred in law and on facts in disallowing its payment of Rs.3,80,962/- made to two domestic companies on account of non-deduction of TDS therefore. A perusal of the corresponding lower appellate discussion in paragraphs 6 to 6.3 suggests that the assessee had admittedly not deducted TDS on interest payment made to M/s Fullerton India Credit Company and M/s Tata Capital Ltd. nor it could provide the corresponding details that both of them stood assessed *qua* the very income, in compliance to section 40(a)(ia) second proviso r.w.s. 201(1) of the Act. We thus find no merit in the assessee's instant fourth substantive ground which fails in very terms.

11. The assessee's last substantive ground challenging 10% ad-hoc disallowance of its expenditure pertaining to various heads to the tune of Rs.73,711/- also stands declined once it is failed to prove that the same have been incurred wholly and exclusively for the purpose of the business. Rejected accordingly.

11.1 This assessee's quantum appeal ITA No. 78/Del/2017 is partly allowed. Necessary computation shall follow as per law.

12. We now advert to assessee's consequential penalty appeal ITA No. 5755/Del/2019 *qua* foregoing disallowances/additions. Mr. Bansal vehemently argues that we ought to confirm the same at least *qua* assessee's latter twin substantive ground which stands rejected hereinabove. We quote CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC) that it is not each and every quantum disallowance/addition which *ipso facto* attracts the impugned penalty provision as both these proceedings are parallel in nature. We accordingly hold that the learned lower authorities have erred in law and on facts in levying the impugned section 271(1)(c) consequential penalty in assessee's case. This latter appeal ITA No. 5755/Del/2019 succeeds in very terms.

13. To sum up, the assessee's quantum appeal ITA No. 78/Del/2017 is partly allowed and latter penalty appeal ITA No. 5755/Del/2019 is allowed in above terms. A copy of this common order be placed in respective case files.

Order Pronounced in the Open Court on 20/12/2024.

Sd/-

**(Pradip Kumar Kedia)**  
**Accountant Member**

**Dated: 20/12/2024**

\*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**