

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 3388/Mum/2024
(Assessment Year: 2013-14)

Agrawal Solutions Private Limited 1107, Western Edge II, Behind Metro Cash N Carry, Off W E Highway, Kandivali, East – 400101.	Vs.	Deputy Commissioner of Income Tax-Circle-4(1)(1) Aaykar Bhavan, Maharshi Karve Road, Mumbai – 400020.
PAN/GIR No. AAHCA7363G		
(Assessee)	:	(Respondent)

ITA No. 3356/Mum/2024
(Assessment Year: 2013-14)

Assistant Commissioner of Income Tax-Circle-4(1)(1) Room No. 642, Aaykar Bhavan, Maharshi Karve Road, Mumbai – 400020.	Vs.	Agrawal Solutions Private Limited 1107, Western Edge II, Behind Metro Cash N Carry, Off W E Highway, Kandivali, East – 400101.
PAN/GIR No. AAHCA7363G		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Snehal Shah & Shri. Siddharth Srivastava
Respondent by	:	Shri. Ram Krishn Kedia (SR.DR.)

Date of Hearing	:	06.03.2025
Date of Pronouncement	:	11.03.2025

ORDER

Per Kavitha Rajagopal, J M:

These are cross appeals filed by the assessee and the revenue challenging the order of the learned Commissioner of Income Tax (Appeals), Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s. 250 of the



Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The revenue has raised the following grounds of appeal:

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance of business promotion expenses on account of Gift Distribution of Rs. 1,15,42,331/, payment made to Lalit Hotel of Rs. 27,99,142/-and Chordia events of Rs. 1,25,000/- to 25% of the total expenses and giving relief of Rs. 1,07,22,765/-without appreciating the fact that the third party enquiry conducted by the AO revealed that no seminar for business promotion was conducted at Lalit Hotel on the given date as claimed by the assessee?"*

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the disallowance of business promotion expenses on account of expenditure incurred through credit card payment of Rs. 24,384/- without appreciating the fact that the said payment was disallowed for failure on part of the assessee to submit the supporting documents?"*

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the disallowance of interest payment expenditure amounting to Rs. 45,44,425/- comprising of Rs. 30,74,062/ for Interest expense on Cash credit facility and Rs. 14,70,363/- for Interest on the loans availed as revenue expenditure after admitting additional evidence without calling for remand report from the AO which is in violation of Rule 46A of the Income Tax Rules?"

4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the interest payment expenditure amounting to Rs. 5,64,566/- for Interest on the loans availed as revenue expenditure without appreciating the fact that the AO in the assessment order has held that there is direct nexus of the said expenditure with the acquisition of the fixed asset which has not been put to use in the year under consideration and is not allowable as revenue expenditure?"*

5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the disallowance of interest payment expenditure amounting to Rs. 9,05,797/-for Interest on the loans availed as revenue expenditure without appreciating the fact that the assessee during the assessment proceedings had itself claimed before the AO that the said expense was capitalized in its books?"*

6. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the interest payment expenditure amounting to Rs. 30,74,062/- for Interest expense on Cash credit facility as revenue expenditure without appreciating the fact that the AO during the assessment proceedings had held that the said expense was incurred in connection with acquisition of land and as such cannot be allowed as revenue expenditure?"*



7. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the amount of Rs. 4,29,664/- out of Rs. 14,01,856/ of loan processing fee as revenue expenditure without appreciating the fact that the AO during the assessment proceedings based on the assessee's own admission and details submitted, held that all interest cost relates to the purchase of the land and flat in possession and therefore any expenditure related to borrowing of the capital the utilization of which is towards the capital expenditure, cannot be allowed as revenue expenditure?"

8. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to the extent of Rs. 52,20,000/- out of Rs. 69,20,000/- made u/s 68 on account of share application money received after admitting additional evidence without calling for remand report from the AO which is in violation of Rule 46A of the Income Tax Rules?"

9. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to the extent of Rs. 52,20,000/- out of Rs. 69,20,000/- made u/s 68 on account of share application money received without appreciating the fact that the AO during the assessment proceedings held that the assessee didn't bring anything on record to show, the identity, capacity and creditworthiness of the so-claimed share applicants and the cash deposits in form of share application money were immediately diverted to repay the loan creditors and in order to repay the loan creditors, cash from unknown sources best known to assessee were deposited in the guise of 19 individual's names and loan were repaid.?"

3. The assessee has raised the following grounds of appeal:

GROUND 1: UPHOLDING THE DISALLOWANCE OF BUSINESS PROMOTION EXPENSES

1.1 In the facts and circumstances of the case The Hon'ble CIT(A) has erred in upholding Rs. 45,74,254/- i.e 25% of the expenses claimed as total Business Promotion Expenses of Rs. 1,54,90,857/-, (Expenses considered by Ld. AO was Rs. 1,53,21,403).

1.2 The Hon'ble CIT (A), failed to appreciate the fact that the appellant had made submissions regarding the necessity and business relevance of the entire expense, whereas the facts has been accepted partially.

1.3 The Hon'ble CIT (A) though accepted the fact that your appellant is required to incur such expenses and failed to appreciate the fact that the appellant had incurred the expenses but did not fully allow the claim, thereby resulting in a partial and unjust disallowance.

1.4 The appellant requests the Hon'ble Tribunal to allow the entire expense and craves leave to add, amend, alter or modify the ground or grounds of appeal before or during the hearing.



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GROUND 2: UPHOLDING THE DISALLOWANCE OF INTEREST EXPENSES AS CAPITAL EXPENDITURE OF RS.29,19,497/-

2.1 *In the facts and circumstances of the case The Hon'ble CIT(A) has erred in considering the interest expenses as revenue expenditure of Rs.29,19,497/-as capital expenditure instead of revenue expenditure, disregarding the business purpose for which the expenditure was incurred.*

2.2 *The Hon'ble CIT (A) failed to deal with incorrect classification made by the Learned Assessing Officer as capital expenditure though expenditure Incurred is clearly revenue in nature on fact of this case of the Appellant, despite evidence showing it was for business purposes.*

2.3 *The Hon'ble CIT (A), failed to appreciate the fact that the appellant had established that the land has been purchased for business purposes and hence expenditure incurred as interest is business expenses.*

2.4 *The appellant requests the Hon'ble Tribunal to allow the entire expense and craves leave to add, amend, alter or modify the ground or grounds of appeal before or during the hearing.*

GROUND 3: UPHOLDING THE DISALLOWANCE OF LOAN PROCESSING FEES OF RS. 16,87,192/- AS CAPITAL EXPENDITURE INSTEAD OF REVENUE EXPENDITURE.

3.1 *In the facts and circumstances of the case The Hon'ble CIT(A) has erred in considering the Loan Processing Expenses of Rs.16,87,192/- as capital expenditure instead of revenue expenditure, ignoring the fact that the said expenditure has been incurred for the Business Purpose.*

3.2 *In the facts and circumstances of the case the Hon'ble CIT (A) erred in considering the amount of Rs.16,87,192/- as Capital Expenditure despite accepting and acknowledging the fact that said expenditure has been incurred for the Business Purpose.*

3.3 *The Hon'ble CIT (A) has erred in upholding the expenditure of Rs.16,87,192/- as capital expenditure despite accepting facts and allowing an amount of Rs.4,29,664/- as revenue expenditure ignoring the facts that all the expenses incurred were of same nature.*

3.4 *The Hon'ble CIT (A) failed to deal with incorrect classification made by the Learned Assessing Officer as capital expenditure though expenditure incurred is clearly revenue in nature on fact of this case of the Appellant, as the expenses incurred are for Business Purpose.*

3.5 *The appellant requests the Hon'ble Tribunal to allow the entire expense and craves leave to add, amend, alter or modify the ground or grounds of appeal before or during the hearing.*

GROUND 4: UPHOLDING THE DISALLOWANCE OF RS.17,00,000/- ON ACCOUNT OF SHARE APPLICATION MONEY RECEIVED AS UNEXPLAINED INCOME

4.1 *In the facts and circumstances of the case The Hon'ble CIT(A) has erred in upholding the addition made on account of Share Application Money Received as unexplained income without considering submissions made by your appellant in the case.*



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4.2 The Hon'ble CIT (A), failed to appreciate the fact that the appellant had established that the amount received is for the Share Application Money and said amount has been refunded.

4.3. The Hon'ble CIT (A) erred in upholding the disallowance of Rs.17,00,000/-on account of share application money received, whereas allowing 52,20,000/- without appreciating that the said transaction is of same nature.

4.4. The appellant requests the Hon'ble Tribunal to allow the entire expense and craves leave to add, amend, alter or modify the ground or grounds of appeal before or during the hearing.”

4. Brief facts of the case are that the assessee company engaged in the business of post clearance customs related services in Maharashtra and specialized in Additional Custom duty refund from custom department. The assessee company is also engaged in the Real estate development and infrastructure project in the area with the intention to create infrastructure of the company for warehousing facility in line with the current business activity of the assessee. The assessee filed its return of income dated 30.09.2013, declaring a total income of Rs. 88,04,810/-. The case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) had passed the assessment order u/s. 143(3) of the Act, dated 28.03.2016 determining total income at Rs. 3,98,90,645/-, after making various additions/disallowances.
5. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 06.05.2024, partly allowed the grounds of appeal filed by the assessee.
6. Both the assessee as well as the revenue are in appeal before us, challenging the impugned order of the ld. CIT(A) on various grounds.
7. We have heard the rival submissions and perused the materials available on record. Before getting into the merits of the case, the learned Departmental Representative ('ld. DR' for short) for the revenue contended that the assessee has filed additional evidences



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before the Id. CIT(A), who after considering the same, deleted the impugned additions without complying with Rule 46A(3) of the Act. The Id. DR further contended that the Id. CIT(A) neither sought for remand report from the Id. AO nor had given an opportunity to the Id. AO to examine the said documents. The Id. DR prayed that the same may be remanded back to the Id. CIT(A) to extend an opportunity for the Id. AO to examine and verify the documents filed by the assessee.

8. The learned Authorised Representative (Id. AR for short) for the assessee had nothing to controvert the same and had fairly acceded to remand these issues to the Id. CIT(A).
9. On the above facts of the case, it is observed that the Id. AO has made various additions and on the other hand, the Id. CIT(A) has allowed some of the claim of the assessee by relying on the documents filed by the assessee. Upon perusal of the same, it is observed that the Id. CIT(A) has not confronted the evidences filed by the assessee to the Id. AO, thereby, violating the principles of natural justice and the provisions of the Rule 46A(3) of the I.T. Rules, 1962. We therefore deem it fit to remand all these issues back to the Id. CIT(A) for *de novo* adjudication, after duly considering the submission of both sides. Needless it is to say that sufficient opportunity of hearing is to be given to either parties.
10. In the result, the cross appeals filed by the assessee and the revenue are allowed for statistical purpose.

Order pronounced in the open court on 11.03.2025

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER



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Agrawal Solutions Private Limited

Mumbai; Dated: 11.03.2025
Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai