

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

BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT, AND  
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 2209/Del /2012  
Assessment Year: 2007-08

The A.C.I.T.  
Ward - 13(3)  
New Delhi

Vs.

M/s Mahatta Camera Corp.  
B-2/73C, Safdarjung Enclave  
New Delhi

PAN : AAAFM 7302 H

[Appellant]

[Respondent]

Date of Hearing : 10.12.2015

Date of Pronouncement: 18.01.2016

Appellant by : Shri P. DAM Kanunjna , Sr. DR  
Respondent by : Shri Pradeep Dinodia, CA  
Shri R.K. Kapoor, CA

**ORDER**

**PER CHANDRA MOHAN GARG, JUDICIAL MEMBER**

This appeal filed by the Revenue is directed against the order of the CIT(A)-XII, New Delhi, dated 03/02/2012 in appeal No. 213/11-12 for A.Y 2007-08.

Grounds Nos. 1 & 2

2. The common issue involved in these two grounds and as agitated by the ld. DR is against the allowing of expenses by the ld. CIT(A) on account of advertisement and publicity expenses as business expenses of Rs. 22,87,737/- and on account of business promotion expenses as business expenses of Rs. 1,75,605/-, even though the bills were not in the name of the assessee-firm. The ld. DR prayed that the impugned order may be set aside by restoring that of the AO on this issue.

3. Replying to the above, the ld. AR supported the impugned order and submitted that the ld. CIT(A) has properly considered the submissions of the assessee which has been reproduced at pages 2 to 4 of the impugned order. He further drew our attention towards the conclusion of the ld. CIT(A) and submitted that the expenses so incurred by the assessee were for the purpose of its business and were legitimate expenses incurred wholly and exclusively for the purpose of business of the assessee. Therefore, there was no occasion for the AO to make the disallowance and the ld. CIT(A) rightly deleted the same.

4. On careful consideration of the above rival submissions, which have been reproduced by the Id. CIT(A) in the impugned order on the issue of advertisement and publicity as well as business promotion expenses, we note that as per the modus operandi of the business of the assessee, the assessee appointed wholesale/distributors in all major cities to carry out sales of their products. The distributors, in turn, selected retail outlets and shops from where sales were carried out. The whole-sellers were authorized to give advertisement in local newspapers of their cities to advertise JVC Cameras. The brand being new in India, had to be popularized. The assessee filed details all the details of the expenses before the AO, supported by specimen copies of the bills which were duly examined by the AO. The assessee produced photocopies of the newspaper insertions depicting JVC Brand Cameras. Therefore, these expenses were made wholly and exclusively for the purpose of the assessee's business and on behalf of the assessee by the distributors and the same were actually incurred by the assessee. Similar situation was also pertaining to the business promotion expenses which were also allowed by the first appellate authority.

5. From the operative part of the order of the first appellate authority, we note that the ld. CIT(A) granted relief to the assessee by observing that the AO has made disallowance under the head advertisement and publicity amounting to Rs. 2287737/- and business promotion expenses amounting to Rs. 1,75,605/-. However, the ld. CIT(A) was in agreement with the assessee's submissions that the expenditure has been incurred by the assessee for the purpose of its business. He further observed that these expenses were legitimate expenses incurred wholly and exclusively for the purpose of business. Accordingly the ld. CIT(A) deleted the disallowance made by the AO and allowed the ground of appeal raised by the assessee. In that view of the matter, we are unable to see any valid reason to interfere with the conclusion arrived at by the ld. CIT(A) and thus we uphold the same as the AO could not bring out any allegation or material to show that the claim of the assessee was not sustainable and the facts narrated by the assessee are not correct. Hence, Ground Nos. 1 and 2 of the Revenue are dismissed.

Ground No. 3

6. Vide Ground No. 3, the Revenue is aggrieved by the order of the ld. CIT(A) deleting the addition of Rs. 20 lakhs made u/s 68 of the Income-tax Act, 1961 ['the Act' for short].

7. We have heard the rival submissions and have perused the relevant material on record. The ld. DR, supporting the action of the AO submitted that the AO has made addition u/s 68 of the Act by properly appreciating the material and evidence available on assessment record. He further contended that the ld. CIT(A) granted relief to the assessee by passing a cryptic order without dealing with the allegations and submissions of the assessee. Therefore, this ground may be restored to the file of the ld. CIT(A) for fresh adjudication.

8. The ld. AR, on the other hand, strongly supported the action of the first appellate authority in granting relief. However, he fairly conceded that the ld. CIT(A) has granted relief to the assessee without any deliberations and adjudication on the issue and by passing a cryptic order. Therefore, this issue requires readjudication by the lower authorities. The ld. AR submitted

that the issue has also not been decided by the AO in a proper manner and the submissions of the assessee have not been considered and appreciated in a judicious manner. He submitted that instead of the ld. CIT(A), the issue may be restored to the file of the AO for proper adjudication and to avoid multiplicity of the proceedings.

9. On the basis of foregoing discussion and careful perusal of the operative part of the ld. CIT(A)'s conclusion, it is amply clear that the ld. CIT(A) has decided the issue in favour of the assessee by passing a cryptic order which is not sustainable. We note that the AO has not properly considered the submissions and facts of the case. Therefore, we are of the considered opinion that the issue require to be readjudicated by the AO. Accordingly, we restore Ground No. 3 of the Revenue's appeal to the file of the AO for fresh adjudication. Needless to mention that the AO shall provide due and proper opportunity of being heard to the assessee and without being prejudiced with the earlier assessment and impugned order. Ground No. 3 of the Revenue is allowed for statistical purposes.

7. In the result, the appeal of the Revenue stands partly disallowed on Ground Nos. 1 and 2 and partly allowed for statistical purposes on Ground No. 3.

**The order is pronounced in the open court on 18.01.2016.**

**Sd/-  
(G.D. AGARWAL)  
VICE PRESIDENT**

**Sd/-  
(C.M. GARG)  
JUDICIAL MEMBER**

Dated: 18<sup>th</sup> January, 2016.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi