

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

Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM

ITA No. 740/Del/2013 : Asstt. Year : 2009-10

Deputy Commissioner of Income Tax, Circle-37(1), New Delhi	Vs	Mr. Percival Sam Billimoria, Kh. No. 670/1/2/673, Mani Chhattarpur Pahari, New Sequence no. Gurgaon Road, Chhattarpur Pahari-30, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ABFPB2093N		

**Assessee by : Sh. Ved Jain, Sh. Pranjal Srivastava &
Sh. Ajit Tolani, Advs.
Revenue by : Smt. Rasmita Jha, Sr. DR**

Date of Hearing : 08.12.2015	Date of Pronouncement : 04.03.2016
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 19.12.2012 of ld. CIT(A)-XXVIII, New Delhi.

2. Following grounds have been raised in this appeal:

“1. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of entertainment expenses from Rs.8,01,890/- to Rs.1,60,378/- though the assessee failed to prove the genuineness

and failed to furnish necessary documentary evidence for incurring the above expenses.

2. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of travelling expenses from Rs.42,22,162/- to Rs.8,44,432/- though the assessee could not prove the genuineness of incurring the above expenditure and not furnished necessary documentary evidence for incurring the above expenses.

3. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of travelling expenses since, the principals of the assessee denied having any link/connection w.r.t the travelling expenses stated to have been incurred by the assessee for the clients of the principals.

4. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of travelling expenses since, the assessee was getting a fixed monthly retainer-ship form the Principals and the assessee could not prove the need and genuineness of incurring the expenses for/on behalf of employer without reimbursement.

5. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of travelling expenses since, the assessee has not shown any fee/income from foreign clients and hence, there is no

connection of foreign trips undertaken by the assessee with the assessee's professional receipts.

6. In the facts and circumstances of the case the Ld. CIT(A) grossly erred in restriction the addition made by the AO on account of travelling expenses since, there is no agreement or any arrangement for incurring such expenses by the assessee and categorical denial of having any link/connection w.r.t the travelling expenses incurred by the assessee by one of the two principals, namely M/s Ajay Bhal & Co. from whom 70% (approx) of the retainer-ship fee was received by the assessee, goes to show that such expenses incurred by assessee doesn't relate to earning professional receipts from the said firms.

7. That the grounds of appeal are without prejudice to each other.

8. The appellant craves leave to add, amend or modify any/all the ground of appeal before or during the course of the appeal."

3. Vide Ground No. 1, the grievance of the department relates to the relief allowed by the Id. CIT(A) out of the disallowance made by the AO on account of entertainment expenses.

4. Facts related to this issue in brief are that the assessee filed the return of income on 29.09.2009 declaring an income of Rs.79,95,910/- which was processed u/s 143(1) of

the Income Tax Act, 1961 (hereinafter referred to as the Act) on 28.02.2011. Later on, the case was selected for scrutiny. The AO accepted the trading result as the net profit shown by the assessee at 32% in the year under consideration was better than the net profit @ 26.40% shown in the preceding year. The AO also noticed that the assessee incurred entertainment expenses of Rs.8,01,890/- in the year under consideration. He asked the assessee to prove that such expenses were incurred wholly and exclusively for earning of professional receipt. The AO was of the view that the assessee could not substantiate his own claim with supporting documentary vouchers. He, therefore, disallowed the claim of the assessee on account of entertainment expenses amounting to Rs.8,01,890/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the expenses were incurred wholly and exclusively for the purpose of profession in terms of Section 37(1) of the Act and were allowable in full. It was further stated that the assessee himself borne the expenses for the purpose of his profession, which were not reimbursable from the clients and being independent professional, the assessee attended seminars and conferences held abroad to spread/enhance professional

skills, knowledge and to gain experience & recognition in the field of his profession, which ultimately helped him in delivering best services, those expenses were incurred for earning and that the revenue and the AO made the disallowance without affording any opportunity to the assessee to rebut the same.

6. The ld. CIT(A) after considering the submissions of the assessee observed that the assessee had produced some bills and the statement of credit cards evidencing the payment made towards expenditure. He further observed that for carrying on the profession, the expenditure relating to entertainment needed to be made and that the allowability of the expenditure could not be questioned on the basis that all the bills were not produced during the course of assessment proceedings. The ld. CIT(A) was of the view that reasonableness of the expenditure has to be judged with reference to the nature of business. He further observed that the expenses were incurred having regard to the commercial expediency and those need not necessarily have their origin in contractual obligations and if the assessee carrying on a business finds that it is a commercial expediency to incur directly or indirectly, it would be open to such an assessee to do so notwithstanding the fact that whether a formal deed

did not precede the incurring of such expenditure. The Id. CIT(A) by considering this fact that the total fee from both the law firms amounted to Rs.2,48,50,000/-, whereas the entertainment expenditure incurred while rendering services amounted to Rs.8,01,890/- constituting only 3% approximate of such fee, which were nominal in nature, was of the view that the disallowance of the entire expenditure was not justified. However, by keeping in view the personal element involved in the said expenditure, the Id. CIT(A) restricted the disallowance to 20% of the expenses incurred and sustained the disallowance of Rs.1,60,378/-.

7. The other issue raised by the department vide Ground Nos. 2 to 6 relates to the relief allowed out of the disallowance made by the AO on account of travelling expenses amounting to Rs.42,22,168/-.

8. The facts related to this issue are similar to the facts involved for disallowance out of entertainment expenses, which we have discussed in former part of the order. The observations of the Id. CIT(A) are also similar, the only difference is that the entertainment expenses constituted 3% of the professional fees while the travelling expenses constituted about 17% of such fee. The Id. CIT(A) by keeping in view the personal element restricted the

disallowance to the extent of 20% of the travelling expenses also and sustained the disallowance of Rs.8,44,432/-.

9. Now the department is in appeal. The ld. DR reiterated the observations made by the AO in the assessment order dated 30.12.2011 while the ld. Counsel for the assessee strongly supported the impugned order of the ld. CIT(A) and reiterated the submissions made before the authorities below.

10. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee had been associated with two firms i.e. M/s AZB & Partners and M/s Ajay Bahl & Co. to render consultancy services and advice on the matters relating to his field of expertise. The AO asked the aforesaid firms u/s 133(6) of the Act about the involvement of the assessee and in response the above said two firms did not deny the facts that the services were rendered by the assessee. In the present case, the incurring of expenses was not doubted. However, the AO was of the view that those expenses could have been recovered from the clients and accordingly made the disallowance of the entire expenses incurred under the head 'entertainment' and 'travelling'. In the present case, it appears that the AO did

not appreciate this fact that the assessee had incurred approximate 3% of the personal fee for entertainment expenses and incurred about 17% of the professional fee on account of travelling expenses which cannot be considered to be unreasonable. At the same time, the assessee had not produced the vouchers for all the expenses incurred, moreover, in such type of cases, involvement of personal element cannot be ruled out. In our opinion, the Id. CIT(A) was justified in restricting the disallowance to the extent of 20% instead of whole amount disallowed by the AO. We do not see any infirmity in the impugned order of the Id. CIT(A) and accordingly do not see any merit in this appeal of the department.

11. In the result, appeal of the department is dismissed.

(Order Pronounced in the Court on 04/03/2016)

Sd/-

(Beena Pillai)
JUDICIAL MEMBER

Dated: 04/03/2016

Subodh

Copy forwarded to:

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

Sd/-

(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR