

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE PRESIDENT  
&  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No.-1176/Del/2014  
(ASSESSMENT YEAR-2008-09)**

Morgan Ventures Ltd. A-38, 1 <sup>st</sup> Floor, Mohan Cooperative Industrial Estate, Main Mathura Road, New Delhi. AAACD2873M	vs	DCIT Central Circle 15, New Delhi.
<b>Assessee by</b>	<b>Sh. Ved Jain, Adv. Sh. Ashish Goel. Adv. Sh. Ashish Chadha, CA</b>	
<b>Department by</b>	<b>Sh. P. Dam Kanunja, Sr. DR</b>	

<b>Date of Hearing</b>	<b>29.03.2016</b>
<b>Date of Pronouncement</b>	<b>26.04.2016</b>

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER:**

The present appeal has been filed by the assessee against the order of the Ld. CIT(A) XII, dated 3. 12. 2013 for assessment year 2008-2009 on the following grounds of appeal:

- 1. (i) "That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining disallowance of legal expenses amounting to Rs. 6,91,171/- even*

- though assessee has established genuineness and justification of the claim.*
- (ii) That the disallowance is on mechanical basis without proper appreciation of facts and recording of proper finding.*
2. *(i) That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining addition of Rs. 1,56,24,699/- in respect of alleged unaccounted sale without their being any evidence or material in respect of the same.*
- (ii) That in this case, survey was carried out and on the basis of evidence and material, the unaccounted sale was duly subjected to tax and as such there cannot be any presumption about any further sale.*
- (iii) That addition is merely on the basis of presumption and surmises and in total disregard to facts and legal principles.*
- (iv) That in the alternative, addition is highly arbitrary and excessive.*
3. *That orders of the lower authorities are not justified on facts and same are bad in law.”*

The brief facts of the case are as under:

2.1. The assessee is a company and filed its return of income on 29.09.2008, declaring nil income. The assessee deals in financing, merchant banking, trading in shares trading of plant and machinery and generation of electricity. During the year under consideration the assessee had shown income from business and short term capital gain. The case was selected for scrutiny and notices under section 143(2) and 142(1) were issued. A survey operation was conducted at the business premises of the assessee on 31.01.08. At the time of survey, the assessee admitted sales of Rs. 3.72 crores to M/s. Saini Trading Co., outside the books of

accounts. The Ld. AO, observed that the assessee has shown sale of plant and machinery amounting to Rs. 6,54,08,445/-. After deducting the amount surrendered, it was observed that the assessee has recorded sales of Rs.2,08,32,932/-for the year under consideration the Ld.AO treated 75% of this amount as unaccounted sale proceeds received on these transactions thereby making an addition of Rs.1,56,24,699/-.

2.2. The assessing officer disallowed the claim of legal expenses to an extent of Rs.6,91,171/- on the ground that these expenses have been incurred by the assessee in relation to its sister concern.

3. Aggrieved by the order of the Ld. that you the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the additions made by the Ld.AO.

4. Aggrieved by the order of the Ld. (A), the assessee is in appeal before us now.

4.1. **Ground No.1**: This ground pertains to the disallowance of the legal expenses amounting to Rs.6,91,171/- the ld.AR submitted that the legal expenses amounting to Rs.4,44,171/- in respect of Peregrine Guarding Ltd., the assessee had duly submitted the bills and vouchers in respect of the same before the Ld. CIT (A) as well as the Ld.AO which has been enclosed at pages 33 to 35 of the paper book. The ld.AR submitted that since the bills have been received by the assessee company during the year, the liability for these expenses has also crystallized during the year under consideration. The Ld. AR submitted that all the invoices have been raised in the name of the assessee. During the course of the argument to learn

and ADR has filed documents relating to an ongoing litigation before the Hon'ble jurisdictional High Court wherein the assessee is a party the Ld. AR submitted that the assessee have been holding conferences and meetings with the ado dates and councils in respect of the legal matters pending before the Hon'ble court.

4.2. On the contrary the Ld. DR relied upon the orders passed by the authorities below.

5. We have produced the relevant documents filed in the paper book as well as filed during the course of the arguments by the Ld. AR and the orders passed by the authorities below. It is the contention of the Ld. AR that the legal expenses amounting to Rs.6,91,171/-is in respect of the professional charges paid to the lawyers and consultants for the purpose of business activities of the assessee and the ongoing litigation between the shareholders pending before various courts. It is observed by us that the assessing officer has not disputed the genuineness of the expenses incurred by the assessee. The Ld. AO has disallowed the legal expenses only on the ground that these expenses were not related to the business activities of the assessee. The bills and vouchers produced in the paper book depicts that the assessee have been taking legal advisers from advocates and consultants. Considering the kind of activity carried on by the assessee there is a need for day-to-day consultation with advocates and consultants in respect of the sale of plant and machinery. The authorities below have contended that certain bills pertains the previous year relevant to the assessment year under consideration, the same has been received in the

current assessment year. Merely because the assessee has received the bill in the current assessment year the same cannot be disallowed for the reason that it is an ongoing pendency in the legal profession that a memo of appeal is raced by the professional consultant for any work carried out by them during the year. Such situations cannot be categorized and disallowed under prior period expenses. Since the bills have been received in the year under consideration the liability for payment of these expenses also gets crystallized during the year under consideration.

5.1. We are thus inclined to allow this ground of appeal raised by the assessee.

6. **Ground No. 2:** the next ground relates to the addition of Rs.1,56,24,699 in respect of unaccounted sale. The Ld.AR submitted during the course of search the assessee had admitted out of books sale at Rs.4,24,92,400/-. The Ld.AR submitted that assessee had received 25% of the sale amount in white and 75% of the sale amount in case from M/s.Sai Trading Co. as M/s.Laxmi Steels. The Ld.AR submitted that the ld.AO made further addition an arbitrary and hypothetical basis in respect of sale made to other parties on similar ratio assuming that the assessee has received 75% of the sale amount in black from other parties. He submitted that the assessing officer has made this addition entirely on guess work. The Ld. AR placed his reliance upon the decisions of Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd.,Vs. CIT reported in 26 ITR 775 and the decision of Hon'ble

jurisdictional High Court in the case of CIT vs. Kulwant Rai reported in 291 ITR 36.

7. On the contrary the Ld.DR relied upon the orders of the authorities below. The Ld.DR placed his reliance on the judgment of Andhra Pradesh High Court in the case of Rajnik and Co. Vs. ACIT reported in 251 ITR 561.

8. We have produced the orders of the authorities below as well as the documents filed by the assessee in the paper book, and the judgments relied upon both the sides.

8.1. On consideration of the facts we find that the addition has been made by the Ld.AO on the basis of surmises and guess work. The reasoning given by the Ld.AO for making such addition is entirely on guess work and not based on any cogent material obtained during the course of search. It is well settled legal position, in respect of income tax assessment proceedings that, although strict rules of evidence act do not apply to the income tax proceedings, assessment cannot be made on the basis of imagination and guess work. The assessing officer has estimated the gross profit on sales of assessee, on pure guess and suspicion, without having any cogent material on record.

8.2. The decision relied upon by the Ld.DR in the case of Rajnik and co. Vs ACIT (supra), is distinguishable with the facts of the present case. In the case of Rajnik and co.(Supra), there were seized material on record to arrive at the conclusion that there was suppression of unaccounted sales. In the instant case before us the Ld.AO proceeded to make addition on the sale amount received

from other parties, on the basis, as the assessee had taken 75% of sale amount in black from M/s.Sai Trading Co. as M/s.Laxmi Steels. The assessing officer has not recovered any documents/records which could support the additions made by the Ld. AO on the sale amount from other parties. It is very much apparent from the assessment order at page 6 that, the assessing officer has made this addition of surplus unaccounted sale on a mere guesswork. This being the position and respectfully following the ratio laid down in the case of the Dhakeshwary cotton Mills Ltd., (Supra) and Kulwant Rai (supra) we delete the addition made by the assessing officer on account of unaccounted sales.

8.3 Accordingly the grounds raised by the assessee stands allowed.

9. In the result the appeal stands allowed.

**The order is pronounced in the open court on 26.04.2016**

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

Dated: 26.04.2016

*\*Kavita Arora*

**Sd/-  
(BEENA A PILLAI)  
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI