

आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4875/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2010-11)

Law Charter, 1, Raja Bahadur Mansion, Hanuman Street, Fort, Mumbai- 400 023.	बनाम/ v.	The Asstt. Comm. Of Income Tax – Circle 11(2), Aayakar Bhavan, M.K. Road, Mumbai 400 020.
स्थायी लेखा सं./PAN : AABFL 2094 G		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri V.J. Asrani
Revenue by :	Shri Sunil Kumar Agarwal, DR

सुनवाई की तारीख /**Date of Hearing** : 13-04-2017
घोषणा की तारीख /**Date of Pronouncement** : 21-04-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 4875/Mum/2016, is directed against the appellate order dated 18th April, 2016 passed by learned Commissioner of Income Tax (Appeals)- 5, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 31st December, 2012 passed by the A.O. u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. Re.: Non-admission of additional evidence:

1:1 The Commissioner of Income-tax (Appeals) has erred in not admitting the additional evidence filed by the Appellant before him without appreciating the fact that the Appellant had sufficient cause/reasons for not filing the additional evidence before the Assessing Officer.

1:2 The Appellant submits that considering the facts and circumstance of its case and the law prevailing on the subject the additional evidences were germane to the issue at hand and were admissible in terms of Rule 46A of the Income-tax Rules, 1962 and the Commissioner of Income-tax (Appeals) ought to have considered the same while deciding the appeal.

2: Re.: Disallowance of life insurance premium Rs. 3,00,000/-:

2:1 The Commissioner of Income-tax (Appeals) has erred in confirming the disallowance made by the Assessing Officer of Rs. 3,00,000/- being life insurance premium paid by the Appellant for its partners.

2:2 The Appellant submits that considering the facts and circumstances of its case and law prevailing on the subject the expenditure by way of life insurance premium incurred by it was wholly, exclusively and necessarily for the purpose of its business and is hence allowable in computing its business income and the Commissioner of Income-tax (Appeals) ought to have held as such.

2:3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.

2:4 Without prejudice to the aforesaid the Commissioner of Income-tax (Appeals) has erred in not accepting the revised claim made by the Appellant during the course of the assessment proceedings of treating the said premium as a part of partner's remuneration, which claim was not made by it at the time of filing its return of income for the year.

3:0 Re.: Disallowance of conveyance, telephone, electricity and entertainment expenses:

3:1: The Commissioner of Income-tax (Appeals) has erred in confirming the disallowance made by the Assessing Officer in respect of conveyance, telephone, electricity and entertainment expenses amounting to Rs. 5,15,000/- incurred by the Appellant.

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the said expenses are allowable while computing its total income and the Commissioner of Income-tax (Appeals) ought to have held as such.

3:3 The Appellant submits that the Assessing Officer be directed to delete the disallowance so made by him and to re-compute its total income accordingly.”

3. Brief facts of the case are that the assessee is a firm of practicing Solicitors. The case was selected for scrutiny by the A.O. for framing assessment u/s 143(3) of 1961 Act and two additions were made by the AO vide assessment order dated 31-12-2012 passed by the AO u/s 143(3) of 1961 Act. Firstly, the addition was made by the AO on account of LIC premium of Rs. 3 lacs debited to the P&L account which was incurred for the partner of the assessee firm. The A.O. disallowed the same on the grounds that the partners of the firm are the owners of the firm and they have definite percentage of share in profits and loss earned by the firm. The partners take their own decision and supervision to control over the business activities of the firm and do not depend on the orders and directions of others and they cannot be treated as employees. Hence, the A.O. denied the deduction towards life insurance premium of Rs. 3,00,000/- u/s 37 of the Act and added back the same to the income of the assessee. Secondly, the A.O. observed that certain expenses were reimbursed to the partner which is in the nature of personal expenses of the partners, which was certified by tax-auditor to be expenses of personal nature reimbursed to partners in form no. 3CD for assessment year 2010-11 in column no. 17(b) . The head of the expenses are as under:-

1.	Conveyance expenses	:	Rs. 2,60,000/-
2.	Telephone expenses	:	Rs. 45,000/-
3.	Electricity expenses	:	Rs. 1,50,000/-
4.	Entertainment expenses	:	<u>Rs. 60,000/-</u>
	Total	:	Rs. 5,15,000/-
			=====

The assessee was asked to furnish the details of reimbursement of expenses to partners and how the reimbursement of expenses is allowable in case of the assessee firm. In reply, the assessee explained as under:-

"We are a firm of professionals and attend to the work of the partnership and clients even from the residence and are required to entertain clients and others in connection with the profession. Partner spends these for the purposes of and incidental to the activities of the partnership which contributes to the generation of the income of the firm and are legitimate payments deductible and have been claimed and allowed since the inception of the firm. These are reimbursed as per the provisions of the partnership."

The above contentions of the assessee was rejected by the A.O. on the ground that the assessee firm has not produced any evidence which could show that the above expenses had been incurred by the partners for attending the clients and moreover the auditor of the assessee had himself identified these expenses being of personal nature reimbursed to the partners in the tax-audit report in form no 3CD in clause 17(b), was the observation of the AO. Thus, the A.O. treated the said expenses of Rs. 5,15,000/- as personal expenses of the partners and the same were disallowed and added to the income of the

assessee, vide assessment order dated 31-12-2012 passed by the AO u/s 143(3) of 1961 Act.

4. Aggrieved by the assessment order dated 31-12-2012 passed by the A.O. u/s 143(3) of 1961 Act, the assessee carried the matter in appeal before the ld. CIT(A) who by following his predecessor's appellate orders dated 07-12-2011 for assessment year 2008-09, dismissed the appeal filed by the assessee, vide appellate orders dated 18.04.2016. The additional evidences submitted by the assessee before the learned CIT(A) were not admitted by learned CIT(A) as it could be borne out also from the appellate orders dated 07-12-2011 passed by learned CIT(A) for assessment year 2008-09, which was relied upon by learned CIT(A) for adjudicating appeal for the instant year, that the then learned CIT(A) passed the appellate orders dated 07-12-2011 for assessment year 2008-09 by not considering the additional evidences filed by the assessee which were not allowed to be admitted.

5. Aggrieved by the appellate order dated 18-04-2016 passed by learned CIT(A), the assessee is in appeal before the tribunal.

6. The ld. counsel for the assessee, at the outset, submitted that one of grounds of appeal raised by the assessee is that the ld. CIT(A) has not admitted the additional evidence filed by the assessee before him. It is submitted that non admission of the additional evidences filed by the assessee has led to gross violation of principles of natural justice. It was also brought to our notice that learned CIT(A) relied upon his predecessor appellate orders dated 07-12-2011 passed for assessment year 2008-09 wherein also the learned CIT(A) has declined to admit the additional evidences. The ld. counsel requested that the matter may be set aside to the file of the ld. CIT(A) as the ld. CIT(A) rejected the additional evidence filed by

the assessee and declined to admit the same and hence proceedings had got vitiated at the stage of appellate proceedings before learned CIT(A).

7. The ld. D.R., on the other hand, supported the orders of authorities below.

8. We have considered rival submissions and perused the material available on record. We have observed that the assessee is a firm of practicing solicitors. The assessee has claimed as business expenses LIC premium of Rs. 3 lacs paid by the assessee for partner of the assessee which expenses were debited to Profit and Loss Account. . The A.O. disallowed the same on the grounds that the partners of the firm are the owners of the firm and they have definite percentage of share in profits and loss earned by the firm. The partners take their own decision and supervision to control over the business activities of the firm and do not depend on the orders and directions of others and they cannot be treated as employees of the assessee firm. Hence, the A.O. denied the deduction towards life insurance premium of Rs. 3,00,000/- paid for partners of the assessee u/s 37 of the Act and added back the same to the income of the assessee. Secondly, expenses of conveyance, telephone, electricity and entertainment expenses totaling Rs. 5,15,000/- were also disallowed by the A.O. on the ground that the assessee firm has not produced any evidence which could show that the above expenses had been incurred by the partners for attending the clients and moreover the auditor of the assessee had himself identified these expenses being of personal nature reimbursed to the partners in the tax-audit report in form no 3CD , was the observation of the AO. Thus, the A.O. treated the said expenses of Rs. 5,15,000/- as personal expenses of the partners and the same were disallowed and added to the income of the assessee. It is the say of the ld. counsel for the assessee that the additional evidence filed before the ld. CIT(A) was rejected by learned CIT(A) which is in violation of Rule 46A of the

Income-tax Rules, 1962. The Id. CIT(A) adjudicated the appeal based upon the appellate order of his predecessor for A.Y. 2008-09 , by holding as under:-

“Ground No. (1)

3. In Ground No. (1) appellant challenges disallowance of Life insurance premium amounting to Rs.3,00,000/-.

3.1 Appellant had debited life insurance premium of Rs.3,00,000/- in the Profit and loss Account. AO had disallowed the claim of the appellant.

3.2 This identical issue was considered by CIT(A) - 3 vide order dated 07.12.2011 in para 1.3.1 for A.Y. 2008-09 where it is held as under:

1.3.1 It is further seen that the appellant has failed to produce any evidence which shows that in the event of death of any partner, the firm and not the partner's legal heir shall receive the sum assured so that there is no professional set back to the firm and the financial position of the firm shall not get adversely effected. Therefore, the expenditure incurred on account of insurance premium is not for the benefit of the assessee firm. Therefore, the same cannot be treated as incurred wholly and exclusively for the purpose of appellant. **Therefore, I am in agreement with the AO that the claim which was not made in the original return cannot be claimed by way of revised return** as held by the Supreme Court in the case of Goetze India Ltd. 284 ITR 323(Supreme Court). The case laws relied by the appellant cannot be taken as precedent as the facts of the case are different and depend upon each case to each case. There/ore, there cannot be any precedent on the facts of the case, as every decision has to be understood in the light of the facts of that case'. As rightly said by the Hon'ble Supreme Court in Willie (William) Slanay v. State of M.P. (AIR) (1956)(Supreme Court)116, (1966) (2 SCR 1140) that there is no such a judicial precedent on facts that counsel and even judges, are sometimes prone to argue and to act as if they were a decision is available as a precedent only if it decides a question of law. Therefore, it is not necessary to refer all the judgments relied upon by AR in its written

submissions. In the light of the above facts and discussions, I am of the considered opinion that the expenditure amounting to Rs.3,00,000/- incurred on account of insurance premium in partners life is not incurred wholly and exclusively for the purpose of business of the firm and therefore, the same is disallowed by the A.O. Accordingly, this ground of appeal is treated as dismissed.

Following the above decision of CIT(A), my predecessor, disallowance made by the AO is confirmed. This ground of appeal is dismissed.

Ground No. (2)

4. On Ground No.2 appellant challenges disallowance of conveyance, telephone, electricity and entertainment expenses amounting to Rs.5,15,000/-.

4.1 AO had disallowed appellant's claim of conveyance, telephone, electricity and entertainment expenses to the tune of Rs.5,15,000/- on the ground that appellant had not produced any evidence for incurring of expenses.

4.2 This identical issue was considered by CIT(A)-3 vide order dated 07.12.2011 in para 2.3 for A.Y. 2008-09 where it is held as under:

*2.3 I have considered the facts and material on record. It is seen that the tax auditor in his audit report has clearly mentioned in Col. No. 17(b) that the above expenditure are personal in nature which have been reimbursed to the partners. It is further seen that the appellant has not adduced any evidence before the AO that same were incurred by the partner for the purpose of business of the appellant firm. It is also noticed that the telephone expenses are in respect of telephone installed at the residence. Similarly, electricity expenses are in respect of electricity bill of the residence of the partners. Further, motor car expenses are also incurred by the partners in their personal capacity. Hence, the expenditure so incurred cannot be treated as expenditure pertaining to assessee firm. **The additional evidence filed by the appellant are not allowed to be***

admitted. *There has been no sufficient and reasonable cause for not producing the same before the AO. In the light of these facts, I am of the considered opinion that expenditure incurred by the partners pertains to the partners in their personal capacity and cannot be treated as business expenditure of the firm. Therefore, the disallowance so made is confirmed.*

Following the above decision of CIT(A), disallowance made by the A.O. is confirmed. This ground of appeal is dismissed.”

The assessee's contention is that the additional evidences filed by the assessee goes to the root of the matter which were not considered by learned CIT(A). It was submitted that learned CIT(A) while confirming the assessment order dated 31-12-2012 has merely relied upon his predecessor order for assessment year 2008-09, wherein also the then learned CIT(A) did not allow the admission of additional evidences filed by the assessee as well fresh claim which was not made in the return of income was not allowed to be made by learned CIT(A) in view of decision of Hon'ble Supreme Court in the case of Goetze India Limited 284 ITR 323(SC) by learned CIT(A) while adjudicating the appeal for assessment year 2008-09. The fresh claim albeit which was not made before the AO vide return of income including revised return of income can be made in the appellate proceedings as per ratio of law laid down by Hon'ble Bombay High Court in the case of CIT v. Pruthvi Brokers and Shareholders (2012) 349 ITR 336(Bom.) , which claim raised by the assessee before learned CIT(A) was not allowed by the learned CIT(A). Thus keeping in view factual matrix of the case as well in the interest of justice and fair play, we are of considered view that one more opportunity needs to be granted to the assessee and hence we are inclined to set aside and restore this matter back to the file of the ld. CIT(A) for de-novo adjudication of the appeal on merits in accordance with law . The learned CIT(A) is directed to admit the additional evidences filed by the assessee as well fresh claims which were not filed before the AO and determine the matter/issue's de novo on merits in

accordance with law. The assessee is directed to produce all necessary and relevant evidences before the ld. CIT(A) to substantiate its claim. Needless to say that proper and adequate opportunity of being heard shall be provided by the ld. CIT(A) to the assessee in accordance with the principles of natural justice in accordance with law. We order accordingly.

9. In the result, appeal of the assessee in ITA No. 4875/Mum/2016 for assessment year 2010-11 is allowed for statistical purpose.

Order pronounced in the open court on 21st April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 21-04-2017 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21-04-2017

I

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ ITAT, Mumbai