

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

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3489/Del/2007
Assessment Year : 2004-095

M/s Cosmique Global,
A-17, Naraina Industrial
Area, Phase-II,
New Delhi.
PAN : AAFC0230A.
(Appellant)

Vs. Deputy Commissioner of
Income Tax,
Circle-27(1),
New Delhi.

(Respondent)

Appellant by : Shri P.K. Bahl, CA.
Respondent by : Shri V.R. Sonbhadra, Senior DR.

Date of hearing : 09.06.2016
Date of pronouncement : 29.06.2016

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the assessee for the assessment year 2004-05 is directed against the order of learned CIT(A)-XXIV, New Delhi dated 3rd May, 2007.

2. Ground No.1 of the assessee's appeal reads as under:-

"That on the facts and circumstances of the case, the learned CIT(Appeals) erred in law by rejecting the assessee's contention that the foreign travelling expenditure of Shri Tilak Raj Manaktala & Smt. Diviya Manaktala were to be allowed as business expenditure. This plea has been rejected inspite of the fact that documentary evidence in support of the assessee's claim was placed on record at the time of the appeal."

3. At the time of hearing before us, it is stated by the learned counsel that the assessee derives income from manufacturing and export of handicrafts. That for the purpose of sale/export of handicrafts, the assessee participates in the trade fairs. That in such trade fairs, Smt. Diviya Manaktala, wife of the partner of the assessee firm assists the partner/employees of the assessee firm. Similarly, Shri Tilak Raj Manaktala, father of the partner of the assessee firm also visited abroad to assist and help the partner/employees of the assessee firm in respect of such trade fairs. Therefore, the foreign visit of Smt. Diviya Manaktala and Shri Tilak Raj Manaktala was for the purpose of business and the Assessing Officer as well as learned CIT(A) disallowed the expenses unjustifiably. In support of this contention, he referred to the details of foreign travel by these two persons.

4. Learned DR, on the other hand, relied upon the orders of authorities below and stated that except the submission of the learned counsel that the foreign visit of Smt. Diviya Manaktala and Shri Tilak Raj Manaktala was for the purpose of business, no documentary evidence in support of the said claim has been furnished. He, therefore, submitted that the order of learned CIT(A) should be sustained.

5. We have carefully considered the submissions of both the sides and have perused the material placed before us. The relevant facts have been noted by the Assessing Officer in page 2 of his order which are reproduced below for ready reference :-

“In the profit and loss account filed alongwith the return of income, the assessee has debited a sum of Rs.43,05,769/- towards travelling expenses. From the details filed, it reveals that the assessee has incurred a sum of Rs.37,36,401/- towards foreign tour and travels. During the course of assessment proceedings, the assessee was

asked to furnish the details of foreign travel made with supporting documentary evidences. From the details filed, it is seen that the assessee has incurred a sum of Rs.5,31,313/- towards foreign travel expenses of Mrs. Diviya Manaktala, wife of Shri Vikash Manaktala partner of the firm from 01.06.2003 to 16.06.2003 for her foreign traveling from New Delhi to Paris and a sum of Rs.1,46,943/- towards foreign travel expenses of Sh. Tilak Raj Manaktala, father of Sh. Vikash Manaktala partner of the firm from 21.07.2003 to 28.07.2003 for foreign travelling from New Delhi to Bangkok, Hongkong etc. It is further seen that Mrs. Diviya Manaktala and Sh. Tilak Raj Manaktala are neither an employee nor associated closely with the assessee's business. It was also not documentary proved that they have any active role of assessee's business. The foreign visit of Mrs. Diviya Manaktala and Sh. Tilak Raj Manaktala to Paris and Bangkok, Hongkong has no business relation with the assessee. It was also not proved with any documentary evidences about the business generated by Mrs. Diviya Manaktala and Sh. Tilak Raj Manaktala from Paris, Bangkok and Hongkong during her visit. As the business exigency was not proved in relation to the expenses incurred, the foreign travelling of Mrs. Diviya Manaktala and Sh. Tilak Raj Manaktala debited at Rs.6,78,256/- under the head Travelling expenses in the profit and loss account of the assessee is disallowed and added back to the income of the assessee."

6. The above order of the Assessing Officer has been upheld by the learned CIT(A). At the time of hearing before us also, the assessee has not produced any documentary evidence to establish that Smt. Diviya Manaktala and Shri Tilak Raj Manaktala participated in the trade fairs and assisted the employees of the assessee in such trade fairs. The details of the foreign travel expenses is a chart prepared by the assessee itself in which purpose of the visit is mentioned as business. However, how it is for the purpose of business is nowhere established. Merely because in a chart which gives the details of the name of the person, the country where travelled, date of travelling and the amount of expenditure incurred, the purpose of visit is mentioned as business, will not establish that the visit was for the purpose of business. The

assessee has to establish the same by independent evidence which has not been produced. Therefore, we uphold the orders of authorities below on this point and reject ground No.1 of the assessee's appeal.

7. Ground No.2 of the assessee's appeal reads as under:-

"That on the facts and circumstances of the case, the learned CIT(Appeals) erred in law in upholding the findings of the Assessing Officer that interest income totaling Rs.14,23,983/- earned on FDR's as income from other sources as against the claim of the assessee that it is a business income and consequently the claim of deduction u/s 80HHC on this income has wrongly been disallowed."

8. At the time of hearing before us, learned counsel for the assessee requested for withdrawal of this ground. The same is permitted and ground No.2 of the assessee's appeal is rejected as withdrawn.

9. Ground Nos.3, 4 & 5 of the assessee's appeal read as under:-

"3. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in law by rejecting the assessee's plea that the amendment of the Taxation Laws (Second Amendment) Bill no.155 of 2005 with retrospective effect and cut off with respect to export turnover exemption limit of Rs.10 Crores is unconstitutional and therefore bad in law.

4. That on the facts and circumstances of the case, the Taxation Laws (Second Amendment) Bill No.155 of 2005 has wrongly brought on record the differentiation under the head export benefits between DEPB scheme and Duty Drawback scheme.

5. That on the facts and circumstances of the case, the learned CIT(Appeals) erred in law by rejecting the assessee's plea that deduction u/s 80HHC has wrongly been reduced by Rs.37,25,652/- in view of Taxation Laws

(Second Amendment) Bill no.155 of 2005 which has been brought on statue retrospectively."

10. We have heard the submissions of both the sides and we find these grounds to be covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment year 2003-04 vide W.P. (C) 612/2008, wherein Hon'ble High Court held as under:-

"1. Learned counsel for the Revenue states that in view of the order dated 30th March, 2015 passed by the Supreme Court in SLP (Civil) 9273/2013 Commissioner of Income Tax-5 v. M/s Avni Exports the exemption under Section 80 HHC of the Income Tax Act 1961 ('Act') cannot be denied to the Petitioner for Assessment Year (AY) 2003-04 in terms of the 3^d and 4th provisos to sub-section (3) thereof on the ground that the Petitioner's export turnover for the said AY exceeded Rs.10 crores.

2. In that view of the matter, the writ petition is allowed as prayed for. Consequent thereto, the Assessing Officer is directed to grant appropriate relief in terms of Section 80 HHC of the Act to the Petitioner for the AY 2003-04."

11. Respectfully following the above decision of Hon'ble Jurisdictional High Court, we direct the Assessing Officer to grant appropriate relief in terms of Section 80HHC of the Act to the assessee for the year under appeal as directed by Hon'ble Jurisdictional High Court in assessment year 2003-04.

12. In the result, the appeal of the assessee is partly allowed.
Decision pronounced in the open Court on 29.06.2016.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(G.D. AGRAWAL)
VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant : **M/s Cosmique Global,
A-17, Naraina Industrial Area, Phase-II,
New Delhi.**
2. Respondent : **Deputy Commissioner of Income Tax,
Circle-27(1), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar