IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.1912/Mum/2020
(**Assessment Year :2012-13**)

M/s. Well Wisher Construction Pvt. Ltd., Officer No.2 & 3, Shakti Arcade Plot No.5, Sector-19D Vashi, Navi Mumbai-400 705	Vs.	Deputy Commissioner of Income Tax-15(3)(1) Aaykar Bhavan Maharshi Karve Road Mumbai- 400 020
PAN/GIR No.AAACW3204H		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Khushiram Jadhwani
Revenue by	Shri Manoj Kumar Singh
Date of Hearing	**08/09/2022**
Date of Pronouncement	**28/09/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.1912/Mum/2020 for A.Y.2012-13 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/DCIT-15(3)(1)/IT-10560/2015-16 dated 22/09/2020 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/03/2015 by the ld. Dy. Commissioner of Income Tax-15(3)(2), Mumbai (hereinafter referred to as ld. AO).

2. The first issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the disallowance of foreign travel expenses in the sum of Rs 11,55,326/- in the facts and circumstances of the case.

2.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a private limited company engaged in the business of real estate development and construction. During the course of assessment proceedings, the ld.AO sought for furnishing of details of travelling expenses debited by the assessee in its profit and loss account. On perusal of the details furnished for travelling expenses totaling to Rs 24,23,407/-, the ld. AO observed that the same includes foreign travel expenses of Rs 11,55,326/-. Assessee was asked to justify whether the foreign travel expenses were incurred wholly and exclusively for the purpose of business. The assessee gave the complete details of foreign travel expenses in a tabular form containing the details of dollars purchased, visa fees, name of the persons who travelled including the directors of the assessee company, country visited, details of air fare and the purpose of travel thereon. The assessee submitted all the supporting documents for each of the aforesaid expenditure before the ld. AO. The list of persons travelled abroad includes directors of the assessee company (both husband and wife are directors), Architect and Advocate of the assessee company. Each place of visit is for specific purpose, which had been detailed in pages 23 to 24 of the paper book filed before us. The assessee also gave detailed explanation as to what was the purpose behind taking Architect and Advocate to different countries and its business nexus thereon. The ld. AO however completely ignored all the contentions of the assessee and proceeded to disallow the said foreign travel expenses

in total on the ground that the said expenditure is not incurred wholly and exclusively for the purpose of business of the assessee company. We find that the explanation given by the assessee during the course of assessment proceedings that the purpose of foreign travel was to explore the recent development in relation to real estate development sites, check the quality of materials to be used for construction of the building so as to add value to the normal construction activity, was rejected by the ld. AO. It was submitted that the foreign tours were meant for understanding the global recent trends in building construction and that was the reason, the architect was also taken along with the directors to the concerned country. The ld. AO however observed that the construction projects undertaken by the assessee are very small and hence there was no requirement of having a study tour thereon ; that no evidence has been submitted by the assessee to prove the benefit derived by the assessee out of these foreign tours. Accordingly, the ld AO concluded that the foreign travel is meant only for personal purposes and not for business purposes of the assessee company. This action of the ld. AO was upheld by the ld. CIT(A).

2.2. We have gone through the details furnished by the assessee in pages 23 and 24 of the paper book which were filed before the ld. AO. The assessee had duly furnished all the possible details that could be filed to justify the incurrence of foreign travel expenses together with the relevant supporting evidences in the instant case. Moreover, the directors of the assessee company had undertaken these foreign trips together with the Architect and the Advocate as the case may be. This fact has not been controverted or disputed by the revenue. Having accepted the fact that the directors of the assessee company had undertaken these foreign trips together with Architect and Advocate, what is to be seen is

whether any person would take Architect and Advocate along with him while going on a personal trip abroad. This itself goes to prove that the foreign visits were purely meant only for business purposes and no personal purpose could be established thereon. Moreover, we hold that there cannot be any personal element of expenditure in a company as held by the Hon'ble Gujarat High Court in the case of Sayaji Iron & Engineering Co. vs CIT reporte din 253 ITR 749 (Guj) . In any case, the purpose of foreign visits is to be decided by the assessee company and the ld. AO cannot step into the shoes of the businessman and decide whether the foreign trips were required or not. Reliance in this regard is placed on the celebrated decision of Hon'ble Supreme Court in the case of CIT vs Dhanrajgirji Raja Narasingarji reported in 91 ITR 544(SC) wherein it was held as under:-

> *Now, coming to the questions referred, it was urged by Mr. Ahuja, learned counsel for the revenue, that an expenditure incurred in connection with a criminal case cannot be considered as an expenditure coming within the scope of section 10(2)(xv) of the Act. He contended that an expenditure incurred in connection with a civil litigation can be given deduction to, if the conditions prescribed in section 10(2)(xv) are satisfied, but no such deduction can be given if any expenditure is incurred in connection with a criminal case. We find no support for this contention from the language of section 10(2)(xv). That provision does not make any distinction between civil litigation and criminal litigation. In fact, expenses incurred in connection with litigation are not separately dealt with under that provision. In our opinion, it makes no difference whether the proceedings are civil or criminal. All that the court has to see is whether the legal expenses were incurred by the assessee in his character as a trader, in other words, whether the transaction in respect of which proceedings are taken arose out of and was incidental to the assessee's business. Further, we have to see whether the expenditure in question was bona fide incurred wholly and exclusively for the purpose of business: see Commissioner of Income-tax v. Birla Cotton Spinning and Weaving Mills Ltd. [1971] 82 ITR 166; [1972] 1 S.C.R. 283 (SC) It is true that in some of the cases this court has held that an expenditure incurred by an accused assessee to defend himself against a criminal charge did not fall within the scope of section 10(2)(xv). Those decisions were rendered on the facts of those cases. That is not the position in this case. On the findings arrived at by the Tribunal, it is clear that the assessee had incurred the expenditure in question for the purpose of his business. The learned counsel for the revenue urged that there was no necessity for the assessee to incur that expenditure, as the prosecution was launched by the*

> *Government. It was not urged, and it could not have been urged, that the expenditure was not bona fide incurred. The Tribunal has come to the conclusion that the expenditure in question has been incurred.* ***The contention that, as the Government was conducting the prosecution, there was no necessity for the assessee to engage his own lawyers is not substantial. It was for the assessee to decide how best to protect his own interest. It was the duty of the assessee to see that the prosecution was properly conducted. He was interested in successfully prosecuting the case. The fact that he did not leave the carriage of the case in the hands of the prosecuting agency of the Government is no ground for disallowing the expenditure. It is not open to the department to prescribe what expenditure an assessee should incur and in what circumstances he should incur that expenditure. Every businessman knows his interest best.*** *So far as the apportionment is concerned we are not told why we should not consider the same as a reasonable estimate.*
>
> ***(emphasis supplied by us)***
>
> *For the reasons mentioned above, we vacate the order made by the High Court and in its place we answer the questions referred to in the affirmative and in favour of the assessee. The appeal is decided accordingly. Parties to bear their own costs.*

2.3. When the assessee had furnished all the relevant details with supporting evidences together with the purpose of foreign travel, it is wrong on the part of the ld. CIT(A) to simply conclude that they were only pleasure tours and hence not meant for the purpose of business. The facts stated by the assessee supported by evidences were never controverted by the lower authorities or by the revenue before us. Hence in view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the ld. AO to delete the disallowance made on account of foreign travel expenses in the sum of Rs 11,55,326/-. Accordingly, the Ground No.1 raised by the assessee is allowed.

3. The next ground to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the adhoc disallowance of 25% made on account of domestic travel expenses in the facts and circumstances of the case.

3.1. We have heard the rival submissions and perused the materials available on record. At the outset, the ld.AR vehemently submitted that there was an independent show cause notice dated 5.3.2015 issued by the ld. AO contemplating to make disallowances / additions in respect of various issues before completing the assessment and opportunity of hearing was given to the assessee in that regard. However, with regard to adhoc disallowance of domestic travel expenses, no such show cause notice per se was given by the ld. AO. It is a fact on record that the assessee duly furnished the complete details of domestic travelling expenses before the lower authorities. These are enclosed in pages 33 and 34 of the paper book. The assessee gave a detailed explanation as to what was the purpose of domestic travel, name of the person who had travelled, break up of fuel expenses thereon, ticket cost, etc together with relevant supporting evidences. There cannot be any personal element in these expenses. Without appreciating the explanations and supporting evidences, the ld. AO made an adhoc disallowance of domestic travel expenses @ 25% and made disallowance of Rs 3,17,020/- in the assessment. It was specifically submitted that the assessee company was previously located in New Delhi and later shifted to Mumbai. In this regard, frequent visits were mandated in order to meet various regulatory compliance requirements and hence employees and its directors had to travel frequently to Gurgoan for the purpose of business. In any event, the books of accounts of the assessee were not rejected by the ld. AO by pointing out certain defects in the evidences submitted by the assessee. Hence there cannot be any adhoc disallowance that could be made by the revenue. On this count also, apart from merits, we have no hesitation in directing the ld.AO to delete the adhoc disallowance made in the sum of Rs 3,17,020/- on account of domestic travelling expenses. The findings

given hereinabove for Ground No. 1 supra together with case laws relied upon thereon, would hold good for this ground also. Accordingly, the Ground No.2 raised by the assessee is allowed.

4. The next ground to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the disallowance of business promotion expenses of Rs 2,42,514/- in the facts and circumstances of the case.

4.1. We have heard the rival submissions and perused the materials available on record. The details of business promotion expenses were called for by the ld.AO which were duly furnished with supporting evidences by the assessee. The ld. AO observed that the evidences are only hotel bills of VIVANTA holiday village at Goa for three nights from 12.3.2012 to 15.3.2012, one night stay (24.9.2011 to 25.9.2011) at Ambey Valley City, Lonavala and the credit card payments made in the name of both Directors. The ld.AO observed that assessee had not furnished any information regarding meetings, conferences, presentation etc that had happened. Accordingly, he concluded that these are merely personal expenses debited in the company's profit and loss account and disallowed the entire sum of Rs 2,42,514/- in the assessment. This has been upheld by the ld. CIT(A). We find that the assessee had explained that it is engaged in the business of real estate development and in that regard , the directors had to meet various people at various places to market the real estate project for the purpose of sale of apartments. Hence the business nexus is proved beyond doubt. Since the payments were incurred out of credit cards belonging to the directors, the assessee company had reimbursed the same to the directors. It is not personal in nature. Moreover, payment to Ambey Valley City has been made through Cheque No. 003239 from the bank account of the assessee company in

the sum of Rs 1,55,411/-. The entire bills issued by various vendors were duly placed by the assessee before the ld. AO .Without looking into any of those bills, the ld.AO by mere suspicion, surmise and conjecture , proceeded to treat the entire expenses as personal in nature and disallowed. We hold that the action of the ld. AO and ld. CIT(A) is certainly unsustainable in the eyes of law. The observations made by us hereinabove for Ground No.1 supra together with case laws relied upon thereon would hold good for this ground also. Accordingly, we direct the ld.AO to delete the disallowance made on account of business promotion expenses in the sum of Rs 2,42,514/- and hence Ground No. 3 raised by the assessee is allowed.

5. The next ground to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the disallowance made on account of depreciation on car merely because the car was registered in the name of the director of the assessee company.

5.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the car registered in the name of the director has been used by the assessee company for the purpose of its business by providing the same to the directors of the company for their official use. Registration of the car in the name of the company is not necessary for the purpose of grant of depreciation thereon in the hands of the assessee company. What is required to be seen is whether the said car has been used for the purposes of business of the company. This fact is not in dispute at all. We find that the car is forming part of fixed assets of the assessee company. Hence by placing reliance on the decision of Hon'ble Supreme Court in the case of Mysore Minerals Ltd vs CIT reported in 239 ITR 775(SC), we hold that the assessee company

would be entitled for depreciation u/s 32 of the Act . We direct the ld. AO to allow depreciation thereon to the assessee company. Accordingly, the Ground No. 4 raised by the assessee is allowed.

6. The next ground to be decided in this appeal is as to whether the ld. CIT(A) was justified in directing the ld. AO to recompute the income of the assessee to allow short term capital loss of Rs 11,11,636/- . We find that the assessee had claimed total loss as per Return of income at Rs 39,68,046/- , but the ld. AO while framing the assessment had started the computation with loss of Rs 28,56,420/-. We find that the ld. CIT(A) had only directed the ld. AO to verify the same and recompute total income of the assessee accordingly. Hence there cannot be any grievance for the assessee in this regard as it has already been addressed by the ld. CIT(A) and the matter is pending before the ld. AO. Hence the Ground No. 5 raised by the assessee is dismissed.

7. The Ground No. 6 raised by the assessee is only seeking TDS credit of Rs 6,31,863/-. This aspect has also been set aside to the file of ld. AO by the ld. CIT(A) to decide in accordance with law and it is pending before the ld. AO. Hence there cannot be any grievance for the assessee. Accordingly, the Ground No. 6 raised by the assessee is dismissed.

8. The Ground No. 7 raised by the assessee is seeking set off of MAT credit u/s 115JAA of the Act. This aspect has also been set aside to the file of ld. AO by the ld. CIT(A) to decide in accordance with law and it is pending before the ld. AO. Hence there cannot be any grievance for the assessee. Accordingly, the Ground No. 7 raised by the assessee is dismissed.

9. The Ground No. 8 raised by the assessee is general in nature and does not require any specific adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 28/09/2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(KAVITHA RAJAGOPAL)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 28/09/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai