

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI . T.S. KAPOOR, ACCOUNTANT MEMBER
AND SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.236/LKW/2017
Assessment Year:2011-12

Dy. CIT-6 Kanpur	v.	M/s Amar Brothers Global Pvt. Ltd. 37-B, Cooperative Industrial Estate Dada Nagar, Kanpur
		TAN/PAN:AAJCA6776A
(Appellant)		(Respondent)

Appellant by:	Smt. Jyoti Verma, D.R.		
Respondent by:	Shri S. K. Jain, C.A.		
Date of hearing:	24	04	2018
Date of pronouncement:	02	05	2018

ORDER

PER PARTHA SARATHI CHAUDHURY, J.M:

This appeal preferred by the Revenue emanates from the order of the Id. CIT(A)-II, Kanpur dated 23/1/2017.

2. The grievances of the Revenue are twofold. First against deletion of disallowance made out of repairs and maintenance of Rs.35,96,813/- on the basis of fresh submissions and additional evidences submitted by the assessee without calling remand report from the Assessing Officer, irrespective of the fact that the assessment order was completed by the Assessing Officer made under section 143(3) of the Act and that the assessee failed to substantiate before the Assessing Officer business expediency of those expenses related to assessee's business, and also that those disallowances were made by the Assessing Officer on the basis of enquiry made on premises on which the said

expenses were claimed to have been made by the assessee for its business. Second issue relates to the deletion of disallowance made out of business promotion of Rs.2 lakhs and moreover whether the assessee did not offer any justified explanation to prove commercial expediency of those expenses with the business of the assessee.

3. The brief facts with regard to the disallowances made on repairs and maintenance are that the assessee is a private limited company and during the relevant accounting period, it came into existence i.e. on 05.07.2014. Before, July, 2010, the assessee was a partnership firm and after formation of the Company, the capital balances of the partners were converted into shares. During the relevant accounting period assessee was engaged in manufacturing and exports of leather goods. The Assessing Officer observed from profit and loss account that the assessee has debited a sum of Rs.53,33,211/- under the head 'Repair & Maintenance of building'. Assessee, vide para 23 of notice u/s 142(1) dated 02.09.2013, was required to furnish details of aforesaid claimed expenditure. In compliance, the required details were furnished and a perusal of which revealed the above expenses comprised of expenditure incurred on various units, specially comprising of Unit I, Unit II and Unit III and further observed by the Assessing Officer that all these units were running on premises taken on rent. Thereafter the Assessing Officer examines the person from who premises were taken on rent and to whom rent were paid and he observes that chart clearly indicates that the assessee-company has taken premises on rent and rent is paid to parties who were either related to the Directors of the assessee-company or covered under section 40A(2)(b) of the Act. The Assessing Officer even noticed that certain construction work was conducted in those rented premises by the assessee-company and assessee was required to furnish copy of

rent agreements in respect of all premises, which were duly furnished by the assessee. On a perusal those rent agreements, it was brought out by the Assessing Officer that assessee-company was to maintain the premises in good condition, neat & clean and white wash etc. to be borne by the assessee. In respect of these maintenance conditions, it was identified by the Assessing Officer that specially in unit No.III assessee has undertaken huge expenses on construction of building structure, etc. in huge quantity of building material and labour charges were consumed. Accordingly assessee was issued a show cause notice as to why these expenses be not treated as non-genuine expenses, especially with reference to the rent agreements which only requires assessee to keep the leased premises neat and clean and water proof and to maintain it in good condition. Whereas assessee has incurred huge expenses for construction work in which cement bags, sand, labour charges, etc were consumed. In response to show cause notice as appearing on record in the order of the Assessing Officer, assessee did not come out with any explanation except submitting that disallowance is accepted to buy peace of mind and avoid litigation in the case. Accordingly, the Assessing Officer had disallowed Rs.35,96,813/- and added to the income of the assessee under the head repair and maintenance.

4. The matter travelled before the first appellate authority and assessee filed written submission which is part of the order of the Id. CIT(A). The crux of the assessee's submission is that lease rent paid for the premises were quite meager considering the area and location. The properties were having construction of 30 years back. Use of the both the factories were done for manufacture of Diesel Engine Pumping Set and foundry where heavy machine were installed with foundry furnace. Rough and tuff use resulting in to the heavy wear & tear of floor and

ceiling roof. Boundary wall was in very bad shape and unsafe and therefore it had become necessary to repair and replace and to construct necessary structures to bring the premises into working condition. Assessee had to bear expenses which are therefore part of Business expenditure and allowable deduction u/s 37 (1) of the Act. The assessee further states that their case is supported by social audit report which is done by a team of auditors who have done audit in the premises as per international guidelines. The assessee further enclosed statement of expenses incurred for repairs and maintenance before the Id. CIT(A). The Id. CIT(A) after considering the assessment order, submissions of the assessee has held that as per rent agreement, it was the duty of the lessee to maintain the terms of the rent agreement and accordingly the premises had to be kept in such condition which has been specifically mentioned in those agreements and expenses incurred definitely falls within the parameters of section 37(1) of the Act and hence allowable expenditure. Regarding application of section 40A(2)(b) of the Act, the Id. CIT(A) negated the version of the Assessing Officer and stated that the Assessing Officer has not questioned the fair market value of the rent paid to the related persons. There was also no specific finding by the Assessing Officer as to the payment of rent made to the related persons as covered within the provisions of section 40A(2)(b) of the Act. The Id. CIT(A), therefore, deleted the entire addition and held that no disallowance can be made under section 40A(2)(b) of the Act under the given circumstances.

5. We have perused the case records, analysed the facts and circumstances of the case and we find that in the assessment order assessment completed under section 143(3) of the Act and regarding repair and maintenance detailed investigation and enquiry have been done by the Assessing Officer. Given practicalities and the relevant

portion of rent agreements so as to what duty lessee has to perform, expenses claimed for repair and maintenance definitely seems to be on higher side. It has been categorically brought out by the Assessing Officer so far as when duty cast upon lessee is to keep leased premises neat and clean, water proof and maintain it in good condition. When the assessee was confronted with the question as to how these huge expenses were incurred in the course of its business, it is very much clear in the assessment order and as recorded by the Assessing Officer that assessee did not had anything to submit except that assessee accepted the disallowance since assessee wanted peace of mind and did not want any further litigation. However, at the appellate stage, we find that assessee is providing various audit reports and other explanations which were not furnished before the Assessing Officer. The Id. CIT(A) states that fair rent was not analysed by the Assessing Officer. However, the Id. CIT(A)'s power being co-terminus with that of the Assessing Officer also did not enquire regarding the veracity of all these payments made. The submission of the assessee which were placed before the Id. CIT(A) and the findings of the Id. CIT(A) do not specify that Id. CIT(A) has either conducted any independent enquiry, as appearing on record, or has called for remand report from the Assessing Officer. The order of the Id. CIT(A) lacks quasi judicial investigation and analysis and being fair to both assessee as well as the Revenue, the order of the Id. CIT(A) does not bring out any independent verification of facts. The order is simply stating that these were details furnished before him and Assessing Officer has not conducted or refuted the certain things in this case. Having said so, we are of the considered view that the Id. CIT(A) should bring out in his order specially as to why he is holding the submissions of the assessee to be correct and that how all these expenses could be covered under section 37(1) of the Act. The Id. CIT(A) should either conduct independent enquiry or call for remand

report and allow the assessee to counter it. With these observations, we set aside the order of the Id. CIT(A) on this issue and restore the matter to the file of the Id. CIT(A) for fresh adjudication after providing an opportunity of hearing to the assessee and as per terms indicated hereinabove. Grounds No.1, 2 and 3 of the grounds of appeal of the Revenue are allowed for statistical purposes.

6. Ground No.4 deals with deletion of disallowance made out of business promotion for Rs.2 lakhs.

7. The Assessing Officer observed in the profit & loss account that a sum of Rs.13,15,566/- had been debited under the head 'Business Promotion'. Assessee was required to furnish details of aforesaid claim of expenditure. The details were filed and during the course of examination of bills & vouchers, it was found that most of expenses were incurred through credit cards of the Directors and were related to shopping, restaurant's bills etc. which were appeared to be personal in nature. Assessee did not explain the commercial expediency of these expenses and out of a sum of Rs.13,15,556/-, to cover possible personal use, the Assessing Officer had disallowed a sum of Rs.2,00,000/-.

8. On this issue, the Id. CIT(A) observed and held that expenditure no doubt has been incurred for the purpose of business on foreign travel. The assessee had filed details of expenses and the Assessing Officer has not pointed out any specific defects in the details filed. The Id. CIT(A) was of the opinion that disallowance was made on the basis of suspicion and therefore it was deleted.

9. We have perused the case records, analysed the facts and circumstances of the case and we observe that in the Assessing Officer's order it is clearly stated that assessee was unable to explain business

exigency for which those expenses were incurred and how those expenses are for business and business promotion. To avoid any loophole in the interest of the Revenue out of expenses claimed of more than Rs.13 lakhs only Rs.2 lakhs were disallowed by the Assessing Officer. The Id. CIT(A), on the other hand, has stated that it is not disputed that the expenditure was for the purposes of business on foreign travel but the order of the Id. CIT(A) does not bring out facts and verification based on which it can be stated that expenses were spent for business promotion. However, since we have restored the earlier issue back to the file of the Id. CIT(A), with similar directions we set aside the order of the Id. CIT(A) on this issue also and restore it back to the file of the Id. CIT(A) for fresh adjudication after providing opportunity of hearing to the assessee.

10. Grounds No.5 & 6 are general in nature, hence need no adjudication.

11. We, therefore, set aside the order of the Id. CIT(A) and restore the entire matter to his file for fresh adjudication as indicated above.

12. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 02/05/2018.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[PARTHA SARATHI CHAUDHURY]
JUDICIAL MEMBER

DATED: 2nd May, 2018

JJ:2404

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR