

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

BEFORE JUSTICE P.P. BHATT, PRESIDENT And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2479/Ahd/2014

(निर्धारण वर्ष/Assessment Year : 2011-12)

The ITO Ward-4(3) Ahmedabad	बनाम/ Vs.	Ascendum KPS Pvt.Ltd. (formerly known as I Call India Pvt.Ltd.) A/7, Ground Floor Safal Profitaire Off 100ft. Prahald Nagar Satellite Ahmedabad-15
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC 18432 K		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri M.S. Khan, CIT-DR
प्रत्यर्थी की ओर से/ Respondent by:	Shri Biren Shah, AR

सुनवाई की तारीख/ Date of Hearing	07/10/2019
घोषणा की तारीख/ Date of Pronouncement	20/12/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)–VIII, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-VIII/ITO/Wd.4(3)466/13-14 dated 13/06/2014 arising in the assessment order passed under s.143(3) r.w.s.147 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 14/03/2014 relevant to Assessment Year (AY) 2011-12.



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2. The Revenue has raised the following ground of appeal:

“3. The Ld.CIT(A) has erred in law and on facts to delete the disallowance of Rs.33,30,790/- on account of consultancy fee expenses not proved to be genuine and incurred for the purpose of assessee’s business.

3. It is the recalled matter for the adjudication of ground no. 3 as evident from the order of the MA No.170/AHD/2019 arising out of ITA No. 2479/AHD/2014 dated 19-08-2019 as the same was omitted to be adjudicated in the ITA No. 2479/AHD/2014 order dated 06-09-2018. Now accordingly, we proceed to adjudicate the ground no. 3 of the Revenue raised in the memo of appeal.

4. The issue raised by the Revenue in ground no. 3 is that the learned CIT (A) erred in deleting the addition made by the AO for ₹33,30,790.00 on account of consultancy fees.

5. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of IT enabled services. The assessee in the year under consideration has incurred an expense of ₹ 35,30,790.00 under the head consultancy expenses. The assessee in support of such expenses furnished the bills for the consultancy fees along with form 16A of all the parties. However, the AO during the assessment proceedings observed as under:



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- i. The details of the services rendered by the parties to the assessee were not furnished.
- ii. Most of the bills issued by the parties are in the same format, therefore, the credentials of the same cannot be said free from the doubts. The original bills were not filed for the verification.
- iii. There was the increase in the expenses under the head consultancy fee in comparison to the immediate preceding assessment year. The assessee in the immediate preceding assessment year incurred consultancy expenses at ₹ 1,36,961.00 only.

5.1. In view of the above, the AO held that the sum of Rs. 2 Lakhs is reasonable towards the consultancy charges and thus he disallowed the balance amount of ₹ 33,30,790.00 (₹ 35,30,790-2,00,000) in the absence of documentary evidences. Hence the AO added the sum of Rs. 33,30,790.00 to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) submitted that the AO in the show cause notice dated 28 February 2014 required it (the assessee) to furnish the details whether the TDS on such consultancy fees has been deducted. Accordingly the details of the TDS were furnished. However the AO without providing an opportunity to the assessee has made the disallowance by changing his stand and holding that the impugned



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consultancy expenses are not genuine despite the fact all the bills, form 16A, copy of the TDS returns and challans were duly furnished during the assessment proceedings.

6.1. The assessee further submitted that there was an increase of the consultancy fees as it has entered into the new projects with its existing clients in UK accounting and USA Mortgaging. Therefore it has hired professionals such as chartered accountants and MBA in connection with such project. The assessee also claimed that all the professionals were having immense experience and specialized knowledge for the new projects undertaken by it.

6.2. The assessee also claimed that it has incurred a sum of Rs. 2,24,836.00 out of the total consultancy of Rs. 35,30,790.00 towards the recruitment consultancy and call centre training. Therefore, the sum of Rs. 2,24,836.00 cannot be compared with the consultancy fees of the earlier assessment year.

6.3. The assessee further claimed that its books of accounts were duly audited and no defect of whatsoever was pointed out by the AO during the assessment proceedings.

6.4. The learned CIT (A) after considering the submission of the assessee and the order of the AO observed that the assessee has furnished



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the requisite details about the parties to whom the payment was made along with the TDS returns, PAN etc. as desired during the assessment proceedings. But the AO without pointing out any defect in the details furnished by the assessee has doubted on the genuineness of the expenses and therefore he made the disallowance without giving the opportunity of the assessee.

6.5. The learned CIT (A) further found that the increase in the professional fee in comparison to the earlier assessment cannot be the basis for making the disallowance. As such all the details of the parties were available with the AO to whom the payments were made through account paid cheque and after deducting the TDS. In view of the above the learned CIT-A deleted the disallowance made by the AO.

Being aggrieved by the order of the learned CIT (A) the Revenue is in appeal before us.

7. The learned DR before us submitted that the assessee has not furnished the details about the services rendered by the parties to whom the consultancy fee was paid. Accordingly this fact was not examined by the authorities below. The learned DR also claimed that the business of the assessee was not increased against the expenses claimed by it.



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8. On the contrary, the learned AR before us filed a paper book running from pages 1 to 346 and submitted that the business of the assessee has increased against the expenses incurred by it. The learned AR in support of his contention referred to the profit and loss account of the assessee placed on page 278 of the paper book.

Both the learned DR and the AR vehemently supported the order of the respective authorities below as favourable to them.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates to the fact whether the consultancy expenses incurred by the assessee are genuine. The genuineness of the expenses was doubted by the AO on the reasons that the details of the services rendered by the parties to the assessee was not furnished, the original bills were not filed for the verification and increase in the expenses in comparison to the earlier year.

9.1. However, we find that all the necessary details about the parties to whom the consultancy fee was paid by the assessee were available before the AO. In case of any doubt about the genuineness of the expenses, the AO before making any disallowance was under the obligation to conduct the necessary enquiry from the concern parties but the AO has not done so.



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9.2. We further note that the non-submission of the original bills cannot be a ground for making the disallowance of the expenses on ad hoc basis. We also apprehend whether the AO required the assessee to furnish the original bills during the assessment proceedings. It is because what is transpired from the order of the AO that the AO mainly required the assessee to furnish the details of the TDS deducted on the payment of such consultancy expenses. Moreover, the AO has not pointed out any defect in the bills filed by the assessee. Accordingly, we hold that there cannot be any disallowance of such expenses in the absence of the original bills.

9.3. Indeed, there was an increase in the amount of consultancy expenses incurred by the assessee during the year viz-a-viz in the immediate preceding assessment year. But we find that the assessee has duly justified the incurrence of such expenses on account of new projects undertaken by it from its clients based in UK and the USA. The contention of the assessee that it has undertaken new projects has not been doubted. Therefore it is inferred that the impugned expenditure were incurred by the assessee in connection with the new projects. We also note that the income from operations of the assessee has increased in comparison to the previous year as evident from the profit and loss account. The relevant extract of the profit and loss account is reproduced as under:



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*“ ASCENDUM KPS PRIVATE LIMITED
(Formerly, I CALL INDIA PRIVATE LIMITED)*

Profit and Loss Account for the year ended 31st March, 2011

<i>Particulars</i>	<i>Sche- Dule</i>	<i>For the year ended 31/3/2010 Amount (Rs.)</i>
	<i>For the year ended 31st March 2011</i>	
	<i>(Amount (Rs.))</i>	<i>Amount (Rs.)</i>
<i>-----</i>		
<i>INCOME</i>		
<i>Income from Operations</i>	<i>8 01 82 793</i>	<i>7 75 70 595”</i>

9.5. Accordingly, we hold that there cannot be any disallowance of the expenses as the assessee has justified the incurrence of such expenses for the purpose of the business.

9.6. In addition to the above, we also note that the AO has accepted part of the consultancy expenses as genuine and part of the expenses as non-genuine. In our view the action of the AO is erroneous as the expenses can either be non genuine or genuine in entirety. As such it cannot be said part of the expenses as genuine and part of the expenses non genuine without giving any specific reason. Therefore, we of the view that the impugned expenses cannot be treated as non genuine in summarily manner. As such the impugned expenses cannot be said as non genuine in view of the fact that the payment was made through banking channel, subject to the TDS provisions and all the parties were holding the PAN. Thus, in such facts of circumstances, the AO at the



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most can hold that such expenses were not incurred in the course of the business that too based on some documentary evidences but there is no such allegation by the AO. In view of the above and after considering the facts in totality, we do not find any reason to interfere in the finding of the learned CIT(A). Hence, the ground of appeal of the Revenue is dismissed.

10. In the result, the ground of appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 20/12/2019

Sd/-
(JUSTICE P.P. BHATT)
PRESIDENT

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/12/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VIII, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad