

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA  
[BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT (KZ)]

[THROUGH VIRTUAL COURT]

I.T.A. No. 407/Kol/2020  
Assessment Year: 2011-12

*Bajaj Parivahan Private Limited.....Appellant*  
*P-3, New CIT Road, 4<sup>th</sup> Floor,*  
*Kolkata – 700 073.*  
*[PAN: AABCB 1031 C]*

Vs

*ITO, Ward – 9(2), Kolkata.....Respondent*

**Appearances by:**

*Shri S.K. Kandai, FCA appearing on behalf of the Assessee.*

*Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.*

Date of concluding the hearing : March 30, 2021

Date of pronouncing the order : April 28, 2021

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals)-8, Kolkata dated 12.02.2020.

2. The issue raised in ground no. 1 relates to the disallowance of Rs. 3,37,727/- made by the AO and confirmed by the Ld. CIT(A) on account of claim charges.

3. The assessee in the present is a company which is engaged in the business of transport. The return of income for the year under consideration was filed by it on 17.03.2012 disclosing total income of Rs. 18,43,384/-. In the capital loss account filed along with the said return, a sum of Rs. 3,37,72,755/- was debited by the assessee on account of claim charges. In this regard, it was explained on behalf of

the assessee before the AO during the course of assessment proceeding that it was in the business of transporting tea on behalf of the Tea Estates to the consignees and the transit loss in weight of consignments in the course of handling tea bags had to be borne by the assessee company. As noted by the AO, the expenditure claimed by the assessee on claim charges however was mainly supported only by self made vouchers. Keeping in view the same as well as the huge volume of transactions, the AO held that there was a scope for the assessee to inflate the expenditure incurred on claim charges. As further noted by the AO in the assessment order, even the representative of the assessee company agreed to offer a disallowance out of claim charges to the extent of 1% i.e. Rs. 3,37,727/-. Accordingly a disallowance to that extent was made by the AO out of claim charges in the assessment completed u/s 143(3) vide an order dated 26.03.2014.

4. The disallowance made by the AO out of claim charges was challenged by the assessee in the appeal filed before the Id. CIT(A) by way of an additional ground. Although the additional ground raised by the assessee in this regard was admitted by the Id. CIT(A), he did not find merit in the submissions made on behalf of the assessee in support of its case on this issue and confirmed the disallowance made by the AO out of claim charges observing that a very fair estimate of disallowance of claim charges was made by the AO keeping in view the possible errors as well as manipulations which had been agreed to at the assessment stage.

5. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, a similar expenditure on account of claim charges was incurred by the assessee company in the preceding as well as succeeding years and even in the assessments completed u/s 143(3), no disallowance on account of claim charges was made by the AO in assessment year 2010-11, 2012-13 and 2013-14. He has submitted that disallowance out of claim charges however was made by the AO to the extent of 2% in the assessment completed u/s 143(3) for assessment year 2014-15 but the same was deleted by the Id. CIT(A) vide his appellate order dated 10.07.2018. A copy of the said order is placed on record and perusal of the same shows that a similar disallowance made out of claim charges to the extent of 2% was deleted by the Id. CIT(A) for the following reasons given in the said order:

*"I have considered the submission of the appellant and perused the relevant assessment records. It appears that all the additions have been made on estimate basis and no material has been brought on record in support of the disallowance. The books of accounts of the appellant are audited and no adverse comments have been made by the AO.*

*The AO in the assessment order had estimated disallowance i.e. 2% under the head "claim" amounting to Rs.9,30,049/-.No evidence has been brought on record in support of the disallowance. The expenditure is supported by internal vouchers and has been reflected in the books of accounts which have been audited. No adverse comments have been made by the Auditor. There are catena of case laws which have held that the disallowance cannot be made on estimate basis without any evidence.*

*The Madras High Court in the case of CIT vs Lakshmi Vilas Bank Ltd Tax case (Appeal) No. 896 of 2013 has held that there was no justification in*

*ad hoc additions if the revenue have thought fit to allow the portion of the claim. The operating part of the judgment reads as follows:*

*"we do not find any ground to admit this tax case (appeal) since the issue herein is purely a factual one. It is not denied by the Revenue that the assessee has 24 branches, 8 divisional office and a head office. The expenditure claimed by the assessee related to petty cash expenditure and when the revenue had thought fit to allow 90% of the claim, there was no reason to reject the balance 10% attributing it to the possibility of having the shade of a personal expenditure. Except for this reasoning, we do not find any justification in the Revenue's contention that the disallowance of 10% is warranted in the facts of the case, which, being a pure factual issue, we reject the appeal at the admission stage itself."*

*The jurisdictional ITAT in the case of ITO Wd-7(3), Kolkata vs M/s Delite Properties Pvt Ltd in I.T.A No.261/Kol/2016, following the decision of the Hon'ble Madras High Court in the matter of CIT vs Lakshmi Vilas Bank Ltd (supra) on the same issues has held-*

*" taking into consideration the entire aspect of the matter and the judgement cited above we are of the view that the order passed by the Ld CIT(A) confirming the order of the addition made by the AO on estimated basis without assigning any reason thereof is incorrect, erroneous and not sustainable in the eyes of law. We therefore delete the addition by disallowance of Rs.1,58,061/-."*

*The Jurisdictional High Court in the case of M/s Ravi Marketing Pvt Ltd vs CIT [2005] 147 TAXMAN 299 (Cal) had ruled that as soon as the expenditure satisfies the eligibility criteria it becomes eligible for deduction. The Hon'ble High Court had held that "The principle of equality or justice or good conscience cannot be introduced to reduce quantitatively what is qualitatively found to be eligible either it qualifies or it does not. If it is not clear, if there is any ambiguity, the benefit would go in favour of the assessee."*

*Therefore, following the decisions of the Jurisdictional High Court, ITAT etc, the disallowances of 2% under the head "claim" amounting to*

*Rs.9,30,049/- on adhoc basis is to be deleted. This ground of appeal succeeds, and is therefore allowed."*

6. The learned counsel for the assessee has submitted that the appellate order of the ld. CIT(A) deleting the disallowance made by the AO out of claim charges in assessment year 2014-15 has been accepted by the department and even the ld. DR has not disputed this position. Moreover, it is noted that the disallowance out of claim charges was deleted by the ld. CIT(A) in assessee's own case for assessment year 2014-15 by relying inter alia on the decision of Hon'ble Kolkata High Court in the case of M/s. Ravi Marketing Pvt. Ltd. (supra) where it was held that the expenditure claimed by the assessee could not be reduced quantitatively when it was qualitatively found to be eligible for deduction. Keeping in view the ratio of the said decision of the Hon'ble Jurisdictional High Court and having regard to the facts of the case, I hold that the adhoc disallowance made by the AO and confirmed by the ld. CIT(A) out of claim charges is not sustainable and deleting the same, I allow ground no. 1 of the assessee's appeal.

7. The issue raised in ground no. 2 relates to the disallowance of Rs. 1,53,818/- made by the AO and confirmed by the ld. CIT(A) out of repairs and maintenance.

8. During the course of assessment proceedings, the claim of the assessee of having incurred repairs and maintenance of Rs. 15,38,183/- was examined by the AO and on such examination, he

found that the said expenses involved petty amounts and the claim of the assessee was supported mainly through self made vouchers. According to the AO, the repairs and maintenance expenses claimed by the assessee thus were not fully verifiable and since the authorised representative of the company also agreed for certain disallowance, the repairs and maintenance claimed by the assessee to the extent of 10% were disallowed by the AO. On appeal, the Id. CIT(A) confirmed the said disallowance.

9. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee company before the authorities below as well as before the Tribunal, it has offices across 30 locations from where the business is conducted and the said offices, some of which are owned by the assessee and some taken on rent, are required to be maintained as offices, godowns and staff rooms. As further submitted on behalf of the assessee company, complete details of repairs and maintenance expenses incurred on the said premises used for the purpose of business were furnished before the AO and without pointing out any specific instances of unverifiable element therein, the disallowance of 10% made out of the said expenses on adhoc basis is not sustainable. Keeping in view the ratio of the decision of Hon'ble Jurisdictional High Court in the case of M/s. Ravi Marketing Pvt. Ltd. (supra) and having regard to the facts of the case that the adhoc disallowance of 10% out of repairs and maintenance expenses has been made by the AO without pointing out even a single specific instance of the unverifiable element involved therein, I am of the view

that the said disallowance is not sustainable. The same is accordingly deleted and ground no. 2 of the assessee's appeal is allowed.

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

Order Pronounced in the Open Court on 28<sup>th</sup> April, 2021.

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

Dated: 28/04/2021  
Biswajit, Sr. PS

Copy of order forwarded to:

1. Bajaj Parivahan Private Limited, P-3, New CIT Road, 4<sup>th</sup> Floor, Kolkata – 700 073.
2. ITO, Ward – 9(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar/DDO  
ITAT, Kolkata