

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&**

**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.187/Mum/2020  
(Assessment Year :2006-07)**

M/s. Lauren Software Pvt. Ltd., (Now: Lauren Information Technologies Pvt. Ltd.,) Jain Arcade, 3 <sup>rd</sup> Floor, Khar Danda, Khar (W) Mumbai – 400 052	Vs.	The Income Tax Officer, Ward 12(3)(3) 224, Aayakar Bhavan M.K.Road, Mumbai – 400 020
<b>PAN/GIR No. AAACL5292L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri M.S. Mathuria
Revenue by	Shri Mehul Jain
<b>Date of Hearing</b>	<b>25/11/2021</b>
<b>Date of Pronouncement</b>	<b>30/11 /2021</b>

**आदेश / O R D E R**

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

This appeal in ITA No.187/Mum/2020 for A.Y.2006-07 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-21, Mumbai in appeal No.CIT(A)-21/ITO-12(3)(3)/IT-703/2015-16 dated 20/03/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.254 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 20/03/2015 by the Id. Income Tax Officer, 12(3)(3), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in sustaining the disallowance of Rs.44,77,661/- on account of consultation fees on an adhoc basis in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of trading in computer hardware, software products and services. This is the second round of proceedings before this Tribunal. In the first round of proceedings, this Tribunal vide its order in ITA No.988/Mum/2011 and 450/Mum/2011 dated 22/01/2014 had set aside this issue to the file of the Id. AO for denovo consideration in accordance with law. In the second round of proceedings, the Id. AO observed that assessee had claimed consultancy charges of Rs.89,55,320/- which was paid to technical people who had offered technical services on behalf of the assessee company to the clients of the assessee company. The assessee had always pleaded that these technicians had possessed requisite skill sets and the assessee had been using their services on hire basis as and when there is a requirement instead of providing employment on a permanent basis to them. The assessee always pleaded that whenever any technical requirement needs to be addressed at the client's location, the assessee company used to hire these technicians and pay their consultancy charges on the basis of satisfactory completion of the rendering of services from them. These consultancy charges paid to them are duly subjected to deduction of tax at source in compliance with the provisions of Chapter XVIIB of the Act. The payments to these consultants were duly made through regular banking channels only. The assessee furnished the month wise details of total consultancy charges paid together with the complete list of consultants, their addresses, the

period for which such consultancy services were rendered by them, the details of the customer location where the concerned consultants had rendered their services, the gross amount of consultancy charges, TDS component thereon, net amounts paid together with the details of bank accounts of the concerned consultants before the lower authorities. The assessee also parallelly gave the month wise details of receipts of sales maintenance / support services pursuant to rendering of services by the consultants hired by it. The assessee pointed out that it had earned sales maintenance / support charges income totalling to Rs.3,45,86,694/- and had paid consultancy charges in total only to the tune of Rs.89,55,320/-. It was also pointed out that the consultants engaged on contract basis depending upon their availability at the relevant point of requirement ranged from 62-102 in number. Accordingly, it was pleaded that assessee had duly proved the nature of services rendered by all the consultants, given the complete details of all the consultants together with their bank account details, addresses etc., and accordingly pleaded that the entire consultancy charges paid have been incurred wholly and exclusively for the purpose of business and hence, allowable as deduction u/s.37 of the Act. The Id. AO sought to examine the consultants by issuing notice u/s.133(6) of the Act to 31 consultants identified by him. Out of that, 133(6) notices were served on 25 people and for six people, notices were returned unserved. Out of the persons on whom 133(6) notices were served, only four parties replied to the questionnaire issued by the Id. AO. Based on this, the Id. AO drew adverse inference on the assessee and disallowed 80% of the total consultancy charges on an adhoc basis in the assessment. The Id. CIT(A) gave a categorical finding that the expenses incurred by the assessee were meant wholly and exclusively only for the purpose of business. The Id. CIT(A) also observed that though certain parties were not traceable, the circumstantial evidence, phenomenal

increase in turnover and profit before tax of the assessee, evidence of services rendered, payments made through regular banking channels etc., outweigh the conclusions drawn from the traceability of parties for some reason or other and cannot be rejected outrightly. Having stated so, the Id. CIT(A) strangely restricted the disallowance to 50% of the total consultancy charges as against 80% made by the Id. AO. Aggrieved by this, the assessee is in appeal before us.

3.1. We find from the undisputed facts stated by the assessee before the lower authorities that assessee is a small scale company dealing in computer software and allied services for information technology. To withstand the fierce competition in the IT industry, the assessee and other company M/s. Lauren Information Technologies Pvt. Ltd., were merged and the merged entity carried on the business in the name of M/s. Lauren Software Pvt. Ltd., (assessee herein). We find that assessee had furnished the following documents before the Id. AO:-

a) List showing the names and addresses of the consultants with their last known address with details of gross consultancy charges accrued, tax deducted, net amount paid either directly crediting to their bank account or making payment by account payee cheques.

b) Client location in which the concerned consultants had rendered the services on behalf of the assessee.

c) Bank account details of the consultants.

d) Period for which the concerned consultants had indeed rendered services.

e) Month wise details of total consultancy charges paid to various consultants totaling to 171 in number together with month wise details of sales maintenance / support charges received by the assessee.

f) The details of bank statements of all the 12 months evidencing the concerned payment of consultancy charges to each of the consultants.

3.2. These documents are enclosed in pages 26-72 of the paper book filed before us and are already forming part of the records. We also find that the Id. CIT(A) sought for a remand report from the Id. AO to re-appreciate the aforesaid documents and give his report. The Id. AO did not respond for almost three years and finally gave a remand report dated 27/09/2019 reiterating the earlier submissions. In the said remand report, the Id. AO also admitted that the affidavits have been received from certain consultants. The assessee duly filed rejoinder to the said remand report of the Id. AO before the Id. CIT(A). The assessee also pointed out that the Id. AO identified eight parties to be produced before him in the remand proceedings and they were all produced by the assessee along with their affidavits before the Id. AO. These parties are listed in page 3 of the Id. CIT(A)'s order. Apart from this, the assessee also furnished the chart showing the details of sales / service charges received, consultancy charges claimed, consultancy charges allowed and consultancy charges disallowed by the Id. AO from A.Yrs. 2003-04 to 2008-09. For the sake of convenience, the said chart is reproduced below:-

As St. Year	Sales / Service Charges received	Consultancy Charges claimed	Consultancy Charges allowed	Consultancy Charges disallowed
2003 - 04	20,89,40,794	7,65,970	7,65,970	NIL
2004 - 05	22,53,39,510	29,38,901	29,38,901	NIL
2005 - 06	28,95,94,417	43,84,885	43,84,885	NIL
2006 - 07	44,87,86,598	89,55,320	<b>17,91,064</b>	<b>71,64,256</b>
2007 - 08	41,18,11,219	62,86,226	62,86,226	NIL
2008 - 09	40,75,58,064	80,63,139	80,63,139	NIL

3.3. From the aforesaid chart, it could be seen that the Id. AO had sought to disallow the consultancy charges on an estimated basis only during the year under consideration and no disallowance was made either in earlier years or in subsequent years. Hence, even going by the rule of consistency as upheld by the Hon'ble Supreme Court in the case of Radhasaomi Satsang reported in 193 ITR 321, when there is no change in the facts and circumstances of the case, the Revenue is not bound to take a divergent stand during a particular year alone. Admittedly, the modus operandi practiced by the assessee had not changed in hiring of consultants on need basis and deploying them at the respective client location to render services on behalf of the assessee and remunerate them in the form of consultancy charges.

3.4. In any case, we find that the books of accounts produced by the assessee had not been rejected by the lower authorities. The assessee had furnished all the relevant documents that could be filed to prove the genuineness of consultancy charges from its side. The Id. AO had not pointed out any defect in the said details or had not found any defect in the books produced by it together with supporting evidences. Hence, there cannot be any justification on the part of the lower authorities to make any disallowance of expenses on an estimated basis. Hence, disallowance made by the Id. AO on estimated basis deserves to be deleted on this count also.

3.5. In view of the aforesaid observations, we have no hesitation in directing the Id. AO to delete the disallowance on account of consultancy charges. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 30/11 /2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 30/ 11 /2021  
KARUNA, sr.ps

*ITA No.187/Mum/2020*  
*M/s. Lauren Software Pvt. Ltd.,*  
*(Now: Lauren Information Technologies Pvt. Ltd.,)*

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**