

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCHES "E",
DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE
ACCOUNTANT MEMBER & SHRI SANDEEP GOSAIN, HON'BLE
JUDICIAL MEMBER**

ITA No. 1541/Del./2018
Assessment Year: 2014-15

Maharani of India, B-34, Malcha Marg, Chanakyapuri, New Delhi-110021.	Vs.	A.C.I.T., Circle- 53(1), New Delhi.
PAN No.: AAAPM 6567 A		
Appellant		Respondent

Assessee by: Shri Ashok Batra (CA)
Revenue by : Shri Ratan Singh (Sr.DR)

Date of Hearing: 15/12/2021
Date of Pronouncement: 25/01/2022

ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the assessee against the order of the Id. CIT(A)-18, New Delhi dated 11/01/2018 for the A.Y. 2014-15 wherein the assessee has raised following grounds of appeal:

- "1. On the facts and circumstances of the case, the Commissioner (Appeals) is wrong in sustaining the disallowance of telephone expenses of Rs. 1,23,464/- made by the A.O. by ignoring the submissions of the appellant.*
- 2. On the facts and circumstances of the case, the Commissioner of (Appeals) is wrong in sustaining the disallowance of Rs. 11,01,445/- made by the A.O. on account of entertainment expenses by ignoring the submissions of the appellant.*

3. *On the facts and under the circumstances of the case, the Commissioner of income Tax (Appeals) is wrong in confirming the addition of Rs. 1,80,653/- u/s 40(a)(ia) out of the total additions of Rs. 3,54,703/- by ignoring the submissions of the appellant.*

4. *The disallowances are against the law and facts of the case."*

2. The brief facts of the case are that the assessee is a firm having income from business/profession, house property and other sources. The assessee files its return of income on 29/11/2014 declaring an income of Rs. 16,27,65,110/-. The return of income was processed U/s 143(1) of the Income Tax Act, 1961 (in short, the Act). Finally the assessment was completed U/s 143(3) of the Act on 16/12/2016 determining total income of Rs. 16,44,11,800/- by making various additions.

3. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties and the material placed on record, given part relief to the assessee. Against which, the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

4. The first ground relates to challenging the order of the Id. CIT(A) in sustaining the disallowance of telephone expenses of Rs. 1,23,464/-.

5. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that

the main business of the assessee is export of garments out of India having total export sales of Rs. 57,38,17,552/- i.e. 99.6% out of the total sales of Rs. 57,57,86,619/-. According to the Id. AR, these expenses have been incurred by the partners of the assessee for the purpose of business. Since the timings of European Countries and USA also Australia there is time differences in working hours of the establishments and for this purpose, the partners have to call at these odd hours to the foreign customers. It is an admitted fact that as per Clause 3 of the partnership deed of the firm which has already been placed on record, all the partners are working partners of the firm for carrying out the business activities of the firm and thus, these expenses were incurred wholly and exclusively for the purpose of business of the assessee firm and are entitled to deduction U/s 37(1) of the Act. We also verified the fact that the department had not made any disallowance in preceeding year i.e. A.Y. 2012-13 wherein the assessment was completed U/s 143(1) of the Act. The department has also not made any disallowance for the subsequent year i.e. A.Y. 2015-16 wherein the assessment was passed U/s 143(3) of the Act. Copies of all the orders of the preceedings years as well as subsequent year have already been placed on record and after going through these orders as well as facts of the present case, we found that no disallowance was called

for on telephone expenses and the assessee is entitled to said deduction U/s 37(1) of the Act, accordingly, we direct to delete the same.

6. Ground No. 2 raised by the assessee relates to challenging the order of the Id. CIT(A) in sustaining the disallowance of Rs. 11,01,445/- made by the A.O. on account of entertainment expenses.

7. Having considered the rival contentions and carefully perused the material placed on record. We have also perused the orders passed by the lower authorities. From perusal of the record, we observed that the A.O. had made the addition on the ground that all these entertainment expenses and club expenses are personal in nature and has no connection with the business of the assessee. It is an undisputed fact that the assessee is engaged in the business of export of garments out of India and the foreign buyers, who visited India alongwith their India based consultants from time to time to oversee production process, to verify quality of finished goods and also for designing for fabric related issues and also other various government auditing/licensing persons in connection with export business activities. It is also an undisputed fact that all the partners of the firm are working partners and they have to look after the foreign buyers and soliciting them for entertainment in hotels and clubs to run the business activities of the assessee firm smoothly.

8. We observed from perusal of the record that with regard to entertainment expenses, no disallowances had been made by the A.O. in the preceeding years as well as in the subsequent year. Copy of the assessments order for the A.Y. 2012-13, 2013-14 and 2015-16 alongwith profit and loss account are placed on record at page Nos. 27 to 39 of the paper book. With regard to club subscription/expenses, we observed that the club subscriptions and expenses were incurred for the business purposes as much as it facilitated interaction with business associations etc. The club expenses were incurred with a view to promote to soliciting the customers in export of garments business. The A.O. noted that the expenses with regard to entertainment are related to purchase of foods items and some of the bills are in the names of the partners for Delhi Gold club. In this regard, we are of the view that assessee's business is export of garments out of India and many of the foreign buyers came India in connection with export business activities and the assessee firm have to look after the foreign buyers and soliciting them, but at the same time, we cannot lost sight of the fact that some of the expenses claimed by the assessee are on account of purchase of cigarettes, wines etc., in our view, these expenses incurred by the assessee on purchase of cigarettes, wines etc. cannot be allowed as business expenses. Therefore, considering the totality of facts and circumstances of the case, we are of the view that

sustenance of addition by the Id. CIT(A) at Rs. 11,01,445/- are on higher side and in the interest of justice, we restrict this addition to the tune of Rs.6.00 lacs and rest of the addition is directed to be deleted. We order accordingly.

9. The 3rd ground of appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the addition of Rs. 1,80,653/- U/s 40(a)(ia) of the Act.

10. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that the details and breakup of total payment of Rs. 1,80,653/- submitted before the A.O. and the Id. CIT(A) which are classified the nature of payments are as under:

1(i)	Membership Fee paid to Apparel Export Promotion Council (Page No. 106 of paper book)	Rs. 27,792/-
(ii)	Application fee for getting the export performance certificate (Page No. 107-108 of paper book)	Rs. 31,850/-
(iii)	Balance amount of Rs. 8,154/- (i.e. 67,796 – 59642= 8154) paid for the certificate issued of origin for China (Page No. 104-105 of the paper book.	
2.	Payment made to Export Inspection Agency (Page No. 106 of paper book)	10,409/-

We further noticed that the payments of Rs. 1,01,448/- were made on account of Membership and subscription charges as under:

Date	Particulars	Amount
25/04/2013	Federation of Indian Export Organization	10534
30/04/2013	Membership fee Citi Bank Credit card	3615
30/04/2013	Membership Fee of AMX Bank Credit card	14007
08/05/2013	Garments Exporters Association	750
03/06/2013	Apparel Export Promotion Council	1686
07/06/2013	Mayapuri Small Industries Welfare Association	750
13/06/2013	Indo French Chamber of Commerce	16854
27/06/2013	India Habitat Center	4494
19/07/2013	Membership fee Citi Bank Credit card	10510
10/08/2013	Membership Fee of AMX Bank Credit card	37248
07/12/2013	Mayapuri Small scale for CEPT charges	1000
	Total	1,01,448/-

The details of which are placed on page No. 113 to 144 of the paper book. The assessee has also paid Rs. 1000/- for the membership expenses relating to the Maharani of India Retail Division, details of which is placed at page No. 115 of the paper book. Since the deduction of tax is not deductible under Chapter XVII-B of the Income Tax Act on the aforesaid payments made by the assessee firm. The Id. AR has submitted that the A.O. has not stated any of the sections under which the assessee firm is required to deduct tax at source on these payments. The membership and subscription charges are not covered under any specific sections provided under Chapter XVII-B of the Act. It is also very important to mention here that in the preceeding years i.e. A.Y. 2012-13 and 2013-14 as well as subsequent year i.e. A.Y. 2015-16, the A.O. had not made any

disallowance U/s 40(a)(ia) of the Act which are placed at page No. 27 to 39 of the paper book. Since the tax was not deductible at source under Chapter XVII-B of the Act on these payments. Considering the totality of facts and circumstances of the case as well as the legal obligation and the fact that in the preceding and subsequent years the assessee had not made any disallowance U/s 40(a)(ia) of the Act, therefore, we direct to delete the addition made and sustained U/s 40(a)(ia) of the Act.

11. In the result, this appeal of the assessee is allowed partly.

Order pronounced on 25th January, 2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Delhi

Dated:- 25/01/2022

*Ranjan

Copy of the order forwarded to:

1. The Appellant- Maharani of India, New Delhi.
2. The Respondent- The A.C.I.T., Circle-53(1), New Delhi.
3. CIT
4. The CIT(A)
5. DR, ITAT, New Delhi
6. Guard File (ITA No. 1541/Del/2018)

By order,

Asst. Registrar