

आयकर अपीलुय अधलकरण, 'बी' नुयलडुीठ, डेनुनई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
शुी वुी दुुगल रलव, नुयलडुक सदसुड एवुं शुी डुी. डुंजुनलथल, लेखल सदसुड के समकुष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos. 2442, 2443 & 2444/Chny/2018
नलरुधलरण वरुष/Assessment Years: 2012-13, 2013-14 & 2014-15

Kalaignar TV Pvt. Ltd.,
"Anna Arivalayam", 367/369, Anna
Salai, Teynampet, Chennai 600 018.
[PAN:AADCK0898E]

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 20(1),
Chennai.

(अडुीललरुथुी/Appellant)

(डुरतुडरुथुी/Respondent)

अडुीललरुथुी कुी ओर से / Appellant by
डुरतुडरुथुी कुी ओर से/Respondent by

: Shri Sandeep Bagmar, Advocate
: Shri M. Swaminathan, Sr. Standing Counsel
& Ms. Pushpa, Jr. Standing Counsel

सुनवलई कुी तलरुख/ Date of hearing : 11.05.2022

घुुषणल कुी तलरुख /Date of Pronouncement : 20.07.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These three appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 14, Chennai, all dated 30.05.2018 relevant to the assessment years 2012-13, 2013-14 and 2014-15. Since the facts are identical and common issue has been raised, all the appeals were heard together and being disposed off by this common order for the sake of brevity. In the assessment year 2012-13, the assessee has raised following grounds:

"The grounds of appeal stated hereunder are independent of, and without prejudice to one another:

1. *The order of the CIT(A) confirming the disallowance of legal expenses of Rs.6,76,14,470/- and travelling and conveyance expenses of Rs. 25,60,449/- is contrary to provisions of the Income-Tax Act,1961 and contrary to law, illegal and without any basis.*
2. *The order of CIT(A) is erroneous and bad in law as it simply affirmed the reasons of the AO without appreciating and taking into account various legal and factual submissions placed before it.*
3. *The order of the AO/CIT(A) confirming the disallowance of legal and travel expenses is erroneous, as the said expense clearly fall within the purview of Sec.37(1) of the Income-Tax Act 1961. The said expenses are eligible for deduction since the same were incurred by the Appellant Co. to defend its business reputation by proving the genuineness of the transactions before the Hon'ble CBI Special Court. The Supreme Court in the case Birla Cotton Spinning and Weaving Mills and Birla Brothers Pvt. Ltd (82 ITR 166) and the Delhi High Court judgment in the case of Lakshmiji Sugar Mills Co. (P.) Ltd v. CIT, Delhi (98 ITR 568) has held that the expression "for the purpose of business" encompasses a wider meaning to include not only the running of the business or its administration but also measures for the preservation of the business and protection of its representatives who act in the course of business.*
4. *The order of the CIT(A) is erroneous and bad in law as it is based on the wrong assumption that the above mentioned legal and travel expenses were incurred for personal needs of a Director and shareholder of Appellant Co. The CIT(A) failed to appreciate the fact that said legal and travel expenses incurred by the Appellant Co. have a direct and intimate connection with its business.*
5. *The CIT(A) failed to appreciate the need of the Appellant to defend its public image which was affected due to allegations leveled by the CBI and the Enforcement Directorate against the Appellant Co., its Director and shareholder.*
6. *The case laws relied by the AO and CIT(A) in its orders are distinguishable on facts and therefore not applicable to the facts of the Appellant Co.*

The Appellant craves leave to adduce additional grounds of appeal at any time before, or at the time of, hearing of the appeal.

2. The effective ground raised in the appeal of the assessee is relating to legal and travel expenses incurred by the assessee are

eligible for deduction under section 37 of the Income Tax Act, 1961 ["Act" in short]. In the assessment order, the Assessing Officer has observed and held as under:

The principle issue under consideration is as to whether the legal expenses of Rs.6,76,14,470/- and the travelling & conveyance of Rs.25,60,449/- debited under the head "Other expenses" is allowable u/s.37(1) of IT Act, 1961. As per the provisions of S. 37(1), such eligible expenditure should not be in the nature of capital expenditure, personal expenditure & must have been laid out or expended "wholly and exclusively" for the purpose of business or profession. In order to claim the above expenditure, it needs to be verified as to whether the same had been incurred "wholly and exclusively" for the purpose of business or otherwise.

The nature of expenditure relating to the same is detailed in sub notes 25.1 & 25.2 respectively. For easier comprehension the exact contents of these sub notes detailed in the financial statements as at and for the year ended 31/03/2012 is reproduced below.

"25.1 During the year, the company has incurred a substantial legal expenditure amounting to Rs.6,76,14,470/- defending its Director-cum-shareholder and in an ongoing case at the special Court (Central Bureau of Investigation), New Delhi. The Board of Directors have approved re-imbursment of legal, travelling and other expenses to be incurred by the Directors and others for and on behalf of the company.

25.2 Travelling & Conveyance includes Rs.25,60,449/- towards travelling by one of the Directors for attending court proceedings at Delhi."

During the course of scrutiny proceedings, the assessee was required to further clarify the allowability of the same by providing a detailing about the purpose for which the said expenditures were incurred. In the reply filed by Shri G. Rajendran, Vice President (Finance), Kalaigarnar TV Pvt. Ltd., on 12/03/2015, it was expressed as follows:

"As regards the legal expenses incurred by the company, we wish to submit the following. As already been stated in our earlier letter, charge sheet has been filed by the CBI against the Director and shareholder in 2G Spectrum case. The case is for receipt of Rs.200 crores by the company. The case has been filed against the individuals as they are holding posts in the company as Director and

Shareholder. The entire charge sheet points out only to the amount of Rs.200 crores being received by the company. The entire 200 crores is used by the company only for its business purposes. In order to protect its reputation, the company will have to prove the correctness of the transaction. If the reputation of the company is lost, then the company will lose its entire business. Hence incurring of legal expenses is compulsory to carry on the business activity of the company. Hence we request you to kindly allow the legal expenses as the company's expenses while finalizing the assessment."

The nature of expenditure, the need and purpose of expenditure, the ongoing legal proceedings at New Delhi involving the Director and Shareholder, the final accounts of the assessee company, the contents of the relevant notes and the explanation given on 12/03/2015 were carefully considered. The claims of the assessee company is devoid of merits as the expenditure reimbursed to the Director and shareholder is in the nature of personal expenses and had not been incurred "wholly & exclusively" for the purpose of business. The reason for this contention, is expressed in the subsequent part of this order.

Charges have been framed against the Director and the share holders of the assessee company before the Special CBI Judge Shri O.P. Saini and while admitting the case, the Judge had observed that prima facie the amount received as loan of Rs.200 crores by the assessee company was not a genuine business transaction but in the nature of illegal gratification paid in lieu of the UAS licences. The Special CBI Judge Saini also framed additional charges under Section 193 (giving false evidence) and 120B IPC against Swan Telecom promoter Shahid Usman Balwa, Vinod Goenka, Rajiv Agarwal, Asif Balwa, Karim Morani and Sharad Kumar for creating false documents to show alleged routing of Rs. 200 crore to Kalaignar TV as loan transaction. Subsequently the same special court had also admitted charges framed against 19 persons – 10 individuals and nine companies under the provisions of the Prevention of Money Laundering Act filed by the Directorate of Revenue Intelligence.

This gist by itself explains that the legal proceedings is undertaken in respect of the charges framed against the Directors & shareholders of the assessee company for their alleged misconduct and not that of the company. Kalaignar TV Pvt Ltd is a mere recipient of the alleged illegal gratification and as a company it did not involve itself in the process to receive the funds. This process was actually undertaken by the Directors and the shareholder only. It is not a case where the involvement of Kalaignar TV Pvt Ltd is being put to test. It is not a case where a complaint has been lodged against Kalaignar TV Pvt Ltd for any acts of misdemeanor found in the day to day business of running and telecasting work undertaken by the company. On the contrary, the case before the Special CBI Court is due to alleged involvement

of the Director and Share holders of the company in their individual capacity which is put to test the alleged illegal gratification of Rs.200 crores was received by the company on account of the misdemeanors alleged to have been undertaken by the Director & shareholders of the company. Thus treating the reimbursement of legal expenses and travelling costs of the Director and shareholders of the company to pursue their case against the judicial proceedings at the Special CBI Court at New Delhi as business expenditure of the assessee company in incongruous and hence the same cannot be allowed to be debited as expenditure.

Further, the claim of legal expenditure is dependent upon the purpose it serves, whether in relation to the company or in connection with its Directors and the outcome of the decision and the reputation tagged to it is of no consequence.

On the question as to whether a particular legal expenditure is "wholly and exclusively" incurred for the purpose of business or not, and the outcome of the decision, the pronouncement of the Honourable Supreme Court in the case of Commissioner of Income tax Vs. Hirjee reported in 1953 SCR 714 has categorically distinguished the eligible claim dealing with such legal expenses and directed that:

"in every criminal prosecution where the matter is defended to protect the good name of a business or a professional man, the fear of possible fine or imprisonment must always be there, it must ordinarily be difficult for any court to say, that the expenses incurred for the defence, even if they are not to be regarded as the personal expenses of the person accused, constituted expenditure laid out or expended wholly and exclusively for the purposes of the business. Learned counsel for the respondent frankly admitted that he was not able to find a single case in the books where the expenses incurred by a person, exercising a trade or profession in defending a criminal prosecution, which arises out of his business or professional activities, were-allowed to be deducted in the assessment of his profits or gains for income-tax purposes,"

Since the assessee is not defending its case against any charges framed in defending a criminal prosecution which had arisen out of its business or professional activities, which means in the operations of the TV channel, the legal expenditure cannot be allowed to be debited to the P & L account."

3. On appeal, the Id. CIT(A) confirmed the order of the Assessing Officer by observing as under:

“4.3.1 The AO has disallowed the appellant’s claim of legal expenditure of ₹.6.76 cr and the expenditure under the head – Travelling and Conveyance of ₹.25.60 lakhs on the ground that the aforesaid expenditures were related to 2G Spetrum Scam. The AO has further observed that the lawyers were engaged to represent the individual directors and not that of the company and therefore, it amounted to personal expenditure, and not a business expenditure. Before the CIT(A) the appellant’s AR has reiterated the submission which was already considered by the AO in the assessment order. The AR has submitted that both the expenditures were business expenditure and the genuineness of the payment has not been questioned. The AR has contended that when the company’s reputation is in question, the company has to defend through lawyers.

4.3.2 I have considered both the points of view. It is undisputed that the aforesaid expenditure were related to 2G Spectrum Scam in which the directors of the appellant company were accused. The appellant could not prove how the aforesaid expenditure was incurred to enhance the appellant’s business activity and its profit making capability. I have perused the decision relied on by the AO in the assessment order – CIT v. Hirjee and Praveen Saxena, cited supra and found them directly applicable to the appellant’s case. I concur with the AO in rejecting the appellant’s reliance on the decision in the case of CIT v. Birla Brothers Pvt. Ltd. cited supra. Respectfully following the decisions relied on by the AO, I am of the considered opinion that the aforesaid expenditures cannot be regarded as the appellant’s business expenditure and therefore, the AO’s disallowance is upheld. The appellant’s grounds on this disallowance are dismissed.”

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the Assessing Officer and the Id. CIT(A) disallowed the expenses incurred by the assessee on the ground that the assessee has appeared before the Hon’ble CBI Court and also paid the legal expenses in connection with 2G Spectrum case and therefore, it is not wholly and exclusively for the purpose of business is not correct. The Id. Counsel has further submitted that the Hon’ble CBI Court by order dated 21.12.2017

acquitted all the accused and therefore, it is to be concluded that the expenses incurred by the assessee for the purposes of business only and it has to be allowed and eligible under section 37 of the Act. The Id. Counsel has also pointed out from the Judgement of the Hon'ble CBI Court dated 21.12.2017 and submitted that clean chit was given to all the directors. Further it was pointed out that by the time, the Id. CIT(A) passed the order dated 30.05.2018, the order passed by the Hon'ble CBI Court was already available, but, without considering the same, the Id. CIT(A) confirmed the order of the Assessing Officer on the ground that it is relating to 2G Spectrum Scam case. It was further submitted that the expenses incurred for defending the promoters, shareholders and directors in legal proceedings is allowable as business expenditure under section 37 of the Act. It was further submission that the receipt of ₹.200 crores as loan and utilisation of the said amount towards business of the assessee is a business transaction and for the purposes of the business. The assessee, shareholders and the directors had to prove before the Hon'ble CBI Court and defend their conduct that the transactions of ₹.200 crores was a genuine business transaction and not illegal gratification as alleged by CBI and ED by incurring genuine legal and travelling

expenses. It was also submitted that the company operates through its directors and the directors of the assessee company undertook the transaction of receipt of ₹.200 crores. Therefore, the onus was on the directors to prove that the same was a genuine transaction for the purposes of the business of the company. It was further submission that if the proceedings instituted by the CBI are not defended, it would have resulted in commercial loss, loss of reputation and goodwill, loss of assts and closure of business. Therefore, it was imperative for the assessee company to defend its directors who acted in their figuciary capacity for preserving and maintaining the good name of the assessee company. In view of the above, it was submitted that the defence of the shareholders and directors before the Hon'ble CBI Special Court is the defence of the company for the acts undertaken by the directors in the normal course of the business and acting as agent of the company and by relying various case law as detailed below, the ld. counsel prayed for allowing the deduction claim by the assessee:

S.No.	Judicial Precedents
1.	<i>JB. Advani & Co. Ltd. v. Commissioner of Income tax and Excess Profits Tax [1950] 18 ITR 557 (Bom)</i>
2.	<i>CIT v. H. Hirjee [1951] 19 ITR 612 (Cal)</i>
3.	<i>CIT v. H. Hirjee [1953] 23 ITR 427 (SC)</i>
4.	<i>JN. Singh & Co. Pvt Ltd. v. CIT [1966] 60 ITR 732 (Pun)</i>
5.	<i>Hingir Rampur Coal Co. Ltd. v. CIT [1971] 81 ITR 633 (Bom)</i>
6.	<i>Lakshmiji Sugar Mills Co. (P.) Ltd. v. CIT [1975] 98 ITR 568 (Del)</i>
7.	<i>Rohtas Industries Ltd. v. CIT [1968] 67 ITR 361 (Pat)</i>

8.	<i>CIT v. Birla Cotton Spinning and Weaving Mills Ltd. [1971] 82 ITR 166(SC)</i>
9.	<i>CIT v. Dhanrajgirji Raja Narasingirji [1973] 91 ITR 544 (SC)</i>
10.	<i>CIT v. Ahmedabad Controlled Iron & Steel Reg. Stock-Holders Association Pvt. Ltd. [1975] 99 ITR 567 (Gui)</i>
11.	<i>Parshva Properties Ltd. v. CIT [1976] 104 ITR 631 (Cal)</i>
12.	<i>Atlas Cycle Industries Ltd. v. CIT [1990] 181 ITR 18 (P&H)</i>
13.	<i>Gujarat Agro Oil Enterprises Ltd. v. CIT [2002] 256 ITR 230 (Guj)</i>
14.	<i>Hiranandani Akruti JV v. DCIT [2017] 88 taxmann.com 209 (Mumbai-Trib)</i>
15.	<i>CIT v. Chandulal Keshavlal & Co. [1960] 38 ITR 601 (SC)</i>
16.	<i>Sree Meenakshi Mills Ltd. v. CIT [1967] 63 ITR 207 (SC)</i>
17.	<i>The Weavers Mills Ltd. v. Balkis Ammal & Ors AIR 1969 MAD 462</i>
18.	<i>McKnight (Inspector of Taxes) v. Sheppard [1999] 1 WLR 1333</i>

5. On the other hand, the Id. DR has submitted that as per section 37(1) of the Act, such eligible expenditure should not be in the nature of capital expenditure, personal expenditure and must have been laid out or expended “wholly and exclusively” for the purpose of business or profession. In order to claim the legal and travelling expenditures, it needs to be verified as to whether the same had been incurred “wholly and exclusively” for the purpose of business or otherwise. It was further submitted that the case before the Special CBI Court was due to alleged involvement of the Director and shareholders of the company, in their individual capacity which was put to test. Thus, treating the reimbursement of legal expenses and travelling costs of the directors and shareholders of the company to pursue their case against the judicial proceedings at the Special CBI Court at New Delhi as business expenditure of the assessee company is incongruous and hence the

same cannot be allowed to be debited expenditure. The Id. DR has relied upon the following decisions:

- (i) *CIT vs. Hirjee reported in 23 ITR 427 (SC) [Page No. 3, Para No. 3]*
- (ii) *ICB Ltd. vs. ITO reported in 94 TTJ 241 (ITAT Bombay) [Para No. 20 to 23]*
- (iii) *National Refinery (P) Ltd. vs. ACIT (High Court of Bombay) reported in 424 ITR 267 [Para No. 8].*

6. Per contra, the Id. Counsel for the assessee has argued that there was absolutely no requirement of the individuals to face the Special CBI Court and only in the capacity as directors and shareholders of the assessee company, the individuals were put to test and thus, the legal proceedings related to a transaction, which arises out of an incidental to the assessee's business.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee and written submissions filed by both the parties. The assessee has claimed legal expenses and travelling & conveyance expenses before the Assessing Officer. The Assessing Officer mainly disallowed the expenditure claimed by the assessee on the ground that the legal proceedings was undertaken in respect of the charges framed against the Directors and shareholders of the assessee company for their alleged misconduct and not that of the

company for the reason that Kalaignar TV Pvt. Ltd. is a mere recipient of the alleged illegal gratification and as a company it did not involve itself in the process to receive the funds. This process was actually undertaken by the Directors and the shareholder only. It is not a case where the involvement of Kalaignar TV Pvt. Ltd. is being put to test. It is not a case where a complaint has been lodged against Kalaignar TV Pvt. Ltd. for any acts of misdemeanor found in the day to day business of running and telecasting work undertaken by the company. On the contrary, the case before the Special CBI Court is due to alleged involvement of the Director and Share holders of the company in their individual capacity which is put to test the alleged illegal gratification of ₹.200 crores was received by the company on account of the misdemeanors alleged to have been undertaken by the Director & shareholders of the company. Thus treating the reimbursement of legal expenses and travelling costs of the Director and shareholders of the company to pursue their case against the judicial proceedings at the Special CBI Court at New Delhi as business expenditure of the assessee company is incongruous and hence the same cannot be allowed to be debited as expenditure. On appeal, the Id. CIT(A) confirmed the order of the Assessing Officer by observing that the

expenditures are relating to 2G Spectrum Scam in which the directors and shareholders of the assessee company were accused and the assessee could be proved as to how the aforesaid expenditures are incurred to enhance the assessee's business activity and its profit making capability. We have gone through the orders of authorities below and arguments of both the sides and find that the Assessing Officer has disallowed the expenses claimed by the assessee on the ground that the expenditures incurred by the assessee was not for the business purposes and it was relating to 2G Spectrum case and the Directors and shareholders are involved and the expenditures incurred are not for the business of the assessee and it was only relating to legal and travelling expenses to persue the Directors and shareholders' case before the Special CBI Court, New Delhi. We find that at the time of assessment proceedings, the CBI judgement was not available before the Assessing Officer as the assessment order under section 143(3) of the Act was posted on 27.03.2015 and therefore, there was no occasion for the Assessing Officer to examine the judgement of the CBI Court and consider the issue of legal and travelling expenses incurred by the assessee company are eligible under section 37(1) of the Act or not. Whereas, the Id. CIT(A) passed the appellate order on

30.05.2018 by the time the judgement dated 21.12.2017 of the Hon'ble Special CBI Court was available. However, the Id. CIT(A), without considering the same, confirmed the order of the Assessing Officer by noting that the expenses are relating to 2G Spectrum Scam. In our opinion, both the authorities below have disallowed the expenditure claimed by the assessee on the ground that it was relating to 2G Spectrum case. Both the authorities below have not examined the outcome of the Special CBI Court judgement. Further, we are of the opinion that whether the expenses incurred by the assessee relating to business and eligible for claiming deduction or not, one must look into the judgement of the Special CBI Court, where, the Directors and shareholders of the assessee company are accused and both the authorities below have failed to consider the judgement of the Hon'ble Special CBI Court. In view of the above, we set aside the order of the Id. CIT(A) and remit the matter back to the Assessing Officer to decide the issue afresh in accordance with law after examining the judgement of Hon'ble Special CBI Court.

8. Similar issue on identical facts has been raised in the appeals for the assessment years 2013-14 and 2014-15. Accordingly, we remit the

matter back to the Assessing Officer to decide the issue afresh in view of our above decision in the assessment year 2012-13.

9. In the assessment year 2014-15, the assessee has also raised limitation issue. However, the Id. Counsel has not pressed the above ground, the said ground is dismissed as not pressed.

10. In the result, the appeals filed by the assessee for the assessment years 2012-13 and 2013-14 are allowed for statistical purposes and the appeal for the assessment year 2014-15 is partly allowed for statistical purposes.

Order pronounced on the 20th July, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 20.07.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.