IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.1779/Del/2019
Assessment Year: 2014-15

Cherry Hill Interiors Pvt. Ltd., E-36, East of Kailash, New Delhi.	Vs	Addl. CIT, Special Range-2, New Delhi.

PAN: AACCC2197F

(Appellant)		(Respondent)
Assessee by	:	Shri Manish Dubey, CA
Revenue by	:	Ms Maimun Alam, Sr. DR
Date of Hearing	:	25.04.2023
Date of Pronouncement	:	28.06.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.1779/Del/2019 for AY 2014-15 arises out of the order of the Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in appeal No.10573/16-17 dated 11/12/2018 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.12.2016 by the ld. Assessing Officer, Special Range-2, New Delhi (hereinafter referred to as 'ld. AO').

2. Ground No.1 raised by the assessee is challenging the disallowance made on account of club membership fees in the sum of Rs.2,06,508/- on the ground that they are personal in nature and not meant for the purpose of business.

3. We have heard the rival submissions and perused the material available on record. The assessee is engaged in the business of interior fit-outs in accordance with the customer specifications. The operations of the company involve multiple activities ranging from providing furniture fit out, air-conditioning, fire-fighting equipments, plumbing, electric fittings, installation of work stations, floorings, carpeting and civil work. The assessee is operating on Pan India basis having branches in Delhi NCR, Haryana, Uttar Pradesh, Karnataka, Tamil Nadu and Andhra Pradesh and having customers of multinational companies of known repute. The return of income for the AY 2014-15 was filed by the assessee company on 30.11.2014 declaring total income of Rs.27,35,83,410/- on the total turnover of Rs.174,71,40,311/-. The turnover of the assessee company has increased by Rs.14 crores during the year when compared to the immediately preceding year.

4. The ld. AO observed that the assessee has debited an amount of Rs.2,06,508/- on account of club membership fees which was sought to be disallowed on the ground that the same is purely personal in nature and not meant for the purpose of business of the assessee company. The ld. AO while making the disallowance also observed that the assessee had debited business promotion expenses of Rs.87 lakhs in its Profit & Loss Account which was refuted by the assessee before the ld.CIT(A) stating that the said figure is a wrong figure. The correct figure was only Rs.19.25 lakhs on account of business promotion and the corresponding figure in the immediately preceding year was Rs.17.44 lakhs. The ld.CIT(A) did not agree to the contentions of the assessee and upheld the action of the ld. AO.

5. It is not in dispute that the club membership has been obtained in the name of the assessee company and the representatives of the assessee company were using the said club for entertaining the customers (present and prospective) which, in our considered opinion, is certainly meant for the purpose of business and to be construed as an expenditure incurred as a measure of commercial expediency. In this regard, the Hon'ble Supreme Court had already decided this issue in favour of the assessee in the case of *CIT vs. United Glass Manufacturing Company Ltd., reported in 28 taxmann.com 429*. Similar view was also expressed by the Hon'ble Jurisdictional High Court in the case of *CIT vs. Samtel Color Ltd., reported in 326 ITR 425 (Del).* Respectfully following the same, we direct the ld. AO to delete the disallowance made on account of club membership fees. Accordingly, ground No.1 raised by the assessee is allowed.

6. The Ground No.2 raised by the assessee is challenging the addition made on account of unverifiable purchases in the sum of Rs.45,54,184/- u/s 69C of the Act.

7. We have heard the rival submissions and perused the material available on record. The assessee during the year made purchases from M/s Plyzone to the tune of Rs.53,02,819/-. The ld. AO sought to examine the veracity of the said purchases by issuing notice u/s 133(6) of the Act to the said vendor after obtaining the name and address from the assessee. The said notice was returned unserved. The assessee, however, furnished the copy of ITR of the vendor, copy of ledger account of the vendor as appearing in the books of the assessee, copy of confirmation from the vendor, copy of assessee's bank statement to prove that the payments to the said vendor had been made by account payee cheques together with copy of invoice. The assessee also pointed out that it had paid VAT of Rs.7,48,635/- on the said purchase from M/s Plyzone. The assessee also placed on record the VAT return of the vendor. The assessee also submitted that the Tamil Nadu VAT authorities

had conducted audit of the transactions on which VAT was claimed by the assessee for FY 2013-14, i.e., the year under consideration and that no adverse findings were reported. However, the ld. AO did not heed to the contentions of the assessee and proceeded to make addition on account of unverifiable purchases u/s 69C of the Act in the sum of Rs.53,02,819/- in the assessment on the ground that the assessee had failed to prove the genuineness of the transactions.

8. Before the ld. CIT(A), the assessee was directed to file copy of confirmation from the vendor, registration certificate from the vendor, VAT returns and VAT assessment orders of the assessee. The assessee filed registration certificate of vendor, copy of PAN and ITR of vendor, VAT returns filed online with Government of Tamil Nadu showing input-output and input tax credit. From the perusal of the said return, the ld.CIT(A) concluded that the VAT return showed purchases from Plyzone only to the tune of Rs.7,48,635/- and, hence, he granted relief to the assessee only to that extent and confirmed the disallowance for the remaining portion of Rs.45,54,184/- (Rs.53,02,819/- (-) Rs.7,48,635/-).

9. At the outset, we find that this addition cannot survive as it is made u/s 69C of the Act by the ld. AO. The provisions of section 69C of the Act could be made applicable only where a particular expenditure has been incurred by the assessee for which source is not satisfactorily explained by the assessee. In the instant case, the purchase made by the assessee had been duly accounted in its books and payments for the same had been duly made by account payee cheques and also reflected in the books of account. The books of account filed by the assessee had not been rejected by the Revenue. Hence, the payments made for purchase of goods to the vendor M/s Plyzone having reflected already in the books are properly explained with its respective sources emanating from the books of account. Hence, no addition could be made by invoking the provisions of section 69C of the Act. Reliance in this regard is also placed on the decision of the Jurisdictional High Court

in the case of CIT vs. Radhika Creations in ITA 692/2009 dated 30.04.2010 wherein it was held that the focus of section 69C of the Act is only on the source of such expenditure and not on the authenticity of the expenditure itself. The main grievance of the Revenue in the instant case is that the expenditure incurred is unverifiable and accordingly not genuine *per se.* Whereas in order to invoke the provisions of section 69C of the Act, the prerequisite is that the expenditure has been genuinely incurred and only the source of such expenditure is not satisfactorily explained by the assessee. Hence, it can be safely concluded that the lower authorities grossly erred in invoking the provisions of section 69C of the Act. Accordingly, ground No.2 is allowed.

10. The ground No.3 raised by the assessee is challenging the addition made of Rs.27,98,256/- in respect of amounts deposited on account of voluntary compliance under Service Tax Act (VCES).

11. We have heard the rival submissions and perused the material available on record. It is not in dispute that the assessee had declared income under VCES inclusive of service tax. It is not in dispute that the assessee had indeed deposited the service tax during the year to the account of the Central government. It is not the case of the Revenue that deduction for service tax has been claimed by the assessee twice, i.e., once at the time of making provision and, again, at the time of making the payment. In the instant case, this portion of income was never declared by the assessee for the purpose of service tax. Hence, there is no question of claiming any deduction in earlier years on accrual basis by the assessee. Accordingly, the service tax actually remitted during the year under consideration would be squarely allowable as deduction in terms of section 43B of the Act. Accordingly, ground No.3 is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28.06.2023.

Sd/- Sd/-

(C.M. GARG) (M. BALAGANESH)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Dated: 28th June, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi