(2024) 05 ITAT CK 0076

Income Tax Appellate Tribunal (Delhi A Bench)

Case No: Income Tax Appeal No. 2598/DEL/2023

Bajaj Capital Ltd		APPELLANT
	Vs	
ACIT		RESPONDENT

Date of Decision: May 31, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 30, 36, 37, 37(1), 40(C), 40A(5), 142(1), 143(3)

Hon'ble Judges: Kul Bharat, J; Dr. B. R. R. Kumar, (AM)

Bench: Division Bench

Advocate: R.K.Sharma, Kanv Bali

Final Decision: Allowed

Judgement

1. The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 18.07.2023 for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

“That the Ld. A.A completely erred on facts and in law in passing the impugned Assessment Order for A.Y- 2017-18 U/s 143(3) of the Income Tax Act, Whereby computed at loss of Rs. (-) 6,18,67,869/- against the returned at loss of Rs. (-) 6,21,94,083/-, and make an unlawful disallowance of Rs. 3,26,214/-.

1. That the Ld. AA. completely erred on facts and in law in making addition on account of disallowance of club expenses of Rs. 3,26,214/-.

2. That the Ld. AA. also erred on facts and in law in not appreciating the fact that the club expenses are incurred for the purpose of business.

3. That on the facts and circumstances of the case and in law, the Ld. CIT Appeal erred in sustaining the impugned assessment order U/s 143(3) for AY 2017-18."

3. Facts giving rise to the present appeal are that the assessee filed its return of income on 30.10.2017, declaring total income at loss of INR 6,21,94,083/-. The case was selected for limited scrutiny through Computer Aided Scrutiny Selection ("CASS") assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was framed vide order dated 1.12.2019. Thereby, the Assessing Officer ("AO") disallowed business expenses in respect of club expenditure and fee and subscription of INR 3,26,214/- on the ground that such expense cannot be treated for having incurred wholly and exclusively for business purposes, as same being personal in nature.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the impugned addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Counsel for the assessee submitted that authorities below grossly erred in law and facts for disallowing the expenditure. He contended that such expenditure are admissible for deduction and have been made for the promotion of the business. Hence, the authorities below were not justified for disallowing the same, by treating it personal in nature.

7. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below. He submitted that the expenditure can be allowed if it is incurred wholly and exclusively for the business purposes. But in the present case, the assessee failed to prove that the impugned expenditure was incurred wholly and exclusively for business purpose as stipulated u/s 37(1) of the Act. Thus, no error is committed by the lower authorities in disallowing the expenses.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) after having considered the material on record and has given a detailed finding on facts. For the sake of clarity, the relevant contents of such finding are reproduced herein below:-

5. DECISION

"I have considered the grounds of appeal, statement of facts and also the written submissions filed by the appellant very carefully. Both the grounds raised in this appeal are taken up together for the sake of convenience. They are adjudicated as follows:

(i). The only addition made in the assessment was Rs.3,26,214/- being the disallowance of club expenses. As per AO: During the course of assessment proceedings, it was observed from 3CD its audit report that the assessee has claimed club expenditure and fee and subscription of Rs.3,26,214/-, The assessee was asked to furnish justification, but assessee has not offered any plausible explanation. The said expenditure is personal nature. Therefore, the amount of club expenditure of Rs.3,26,214/- is hereby disallowed and added to the income of the assessee company.". This is the subject matter of appeal for adjudication.

(ii). As per the appellant:" That the Ld. AO completely erred on facts and in law in passing the impugned Assessment Order for A.Y-2017-18 U/s 143(3) of the Income Tax Act, Whereby computed at loss of Rs. (-6,18,67,869/- against the returned loss of Rs. (-) 6,21,94,083/-, and make an unlawful disallowance of Rs. 3,26,214/- and the AO. Completely erred on facts and in law in making addition on account of disallowance of club expenses of Rs. 3,26,214/-. That the Ld. AO. also erred on facts and in law in not appreciating the fact that the club expenses are incurred for the purpose of business".

(iii). I have carefully considered the submissions of the appellant and also the grounds of appeal raised by the appellant. The issue is whether the club expenses incurred by the appellant is allowable in terms of section 37 of the Act. Section 37 envisages that:

37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Expenditure should be incurred wholly or exclusively for Business or Profession - The main prerequisite for claiming deduction under the provision of Section 37 is that expenditure should be wholly and exclusively for business or profession. Expenditure could be incurred by the assessee voluntarily without any necessity; however, the same should be for the purpose of his business or profession.

Principle of Commercial Expediency: In order for an expense to be allowed as a deduction under section 37(1), it must be incurred for the purpose of carrying on a business or profession and must be of a revenue nature. The principle of commercial expediency is also applied, which means that an expense must be considered necessary or reasonable for the conduct of the business or profession. This principle helps to ensure that expenses claimed as deductions are not frivolous or unreasonable.

Burden of Proof: The burden of proving that an expense is incurred for the purpose of carrying on a business or profession rests with the taxpayer. The taxpayer must be able to demonstrate that the expense was incurred wholly and exclusively for the purpose of the business or profession, and that it was not for personal or private purposes.

The assessee was claiming expenditure under section 37 of the Act, the burden was on the assessee to establish that expenditure was laid out or expended wholly and exclusively for the purpose profession and the aforesaid burden of business or could not have been shifted on the Assessing Officer to allow the expenses without production of supporting evidence, when a notice under section 142(1) was issued to furnish clarification and evidence concerning the return of income filed by the appellant.

As laid down by the Supreme Court in the case of Swadeshi Cotton Mills Co. Ltd. v. CIT [1967] 63 ITR 57, that the question whether an amount-claimed as expenditure was laid out or expended wholly or exclusively for the purpose of the assessee's business, profession or vocation has to be decided on the facts and in the light of the circumstances of the each case. The mere existence of an agreement between the assessee and the commission agent, assuming, there was such agreement and payment, does not bind the ITO to hold that the payment was made exclusively and wholly for the purpose of the assessee's business. Although, there might be such an agreement in existence and the payment might have been made, it is still open to the ITO to consider the relevant facts and determine for himself, whether the commission paid has been paid and is deductible in computing the total income of the assessee.

On the basis of the ratio of the Supreme Court judgment in the case of CIT v. Durga Prasad More [1971] 82 ITR 540, it has to be held that the documents to which a reference has been made by the Id. Counsel for the assessee are self-serving devices and brought in aid to support an action which is neither justified on facts nor in law. It is the duty of the AO to go behind the smoke screen and find out the truth of the matter and it is a well-settled law for which authority, if any, may be found in the case of Swadeshi Cotton Mills Co. Ltd. v. CIT [1967] 63 ITR 57 (SC). Mere existence of an agreement would not make either the payment genuine or eligible for deduction as having been made for commercial expediency. Reliance for this was placed on the judgment of the Supreme Court in the case of Lachminarayan Madan Lal v. CIT [1972] 86 ITR 489. In fact it has to be stated that all these documents, viz., schedules of the balance sheet, are self serving devices in furtherance of the cause of the assessee and it cannot be relied upon in view of the judgment of the Supreme Court in the case of Durga Prasad More (supra).

Suffice to state the word 'wholly' refers to quantum and the word 'exclusively' occurring in the qualifying condition of section 37(1) refers to the motive for incurring the expenditure. The Supreme Court, as far back in The Liquidators of Pursa Ltd. v. CIT [1954] 25 ITR 265 (SC), explained that the words 'for the purposes of the business' only meant it to be for the purpose of enabling the carrying on the business and to earn profits therein.

(A). In the case reported in [2012] 25 taxmann.com 11 (Jaipur)/[2012] 53 SOT 295 (Jaipur).., in the case of Deputy Commissioner of Income-tax, Circle-6, Jaipur. v. Rajasthan State Mines & Minerals Ltd. In IT APPEAL NO. 975 (JP.) OF 2011 C.O. NO. 3 (JP.) OF 2012, [ASSESSMENT YEAR 2008-09], dated: MARCH 15, 2012, the issue before the Hon'ble ITAT Jaipur Bench 'B' was:"IT Expenses incurred on cultural events which has no nexus with assessee's business cannot be allowed as business expenditure".

The Hon'ble ITAT has held that: "Section 37(1) of the Income-tax Act, 1961 Business expenditure - Allowability of Assessment year 2008-09 Assessee was engaged in business of mining and trading in minerals It spent Rs. 1.20 lakh on cultural events, like events to help blind and deaf children, organizing rose shows or musical events - It claimed such expenses to be business expenditure under section 37(1) Whether since there was nothing on record to show any nexus between events in question and assessee's business, claim under section 37(1) was to be disallowed - Held, yes [In favour of revenue]".

(B). In another case reported in [2018] 93 taxmann.com 291 (Madras)/[2018] 255 Taxman 362 (Ma--in the case of L. Jairam Parwani. v. Deputy Commissioner of Income-tax, City Circle VI (Inv.), Chennai, in T.C. (A) NOS. 857 AND 858 OF 2008, DATED:APRIL 9, 2018, the issue before the Hon'ble High Court of Madras was:"IT: Payment for acquiring membership in a social club was not a business expenditure, in absence of any evidence to effect that membership was acquired for entertaining customer".

The Hon'ble High Court has held:"Section37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Club expenses) Whether payment made for acquiring membership in a social club could not be allowed as business expenditure, more so, when there was no evidence to prove that membership of social club was acquired for entertaining customers by assessee - Held, yes [Paras 5 and 6] [In favour of revenue".

(C). Yet, in another case reported in (2014) 52 taxmann.com 325 (Bombay)/[2015] 228 Taxman 357 (Bombay), in the case of Schindler India (P.) Ltd. v. Joint Commissioner of Income-tax, in IT APPEAL NO. 159 OF 2012, DATED: MARCH 21, 2014, the issue before the Hon'ble High Court of Bombay was:"IT: Expenditure

incurred by assessee for creating manufacturing facility of elevator in India being in nature of capital expenditure, assessee's claim for deduction in respect of same undersection37 (1) could not be allowed.

IT-II: Club subscription paid by assessee on behalf of its managing director being in nature of personal expenditure, could not be allowed as deduction".

The Hon'ble High Court has held:"I. Section37(1) of the Income-tax Act, 1961 Business expenditure - Allowability of (Machinery) - Assessee was importing components from abroad for making of elevator - Subsequently, due to change in policy, expenses were incurred for creating manufacturing facility in India - Assessee's claim for deduction of said expenses was rejected Whether since expenditure incurred by assessee resulted in bringing enduring benefit for a long time impugned order passed by authorities below was to be upheld - Held, yes [Para 6][In favour of revenue].

II. Section37(1) of the Income-tax Act, 1961 Business expenditure Allowability of (Club expenses) - Whether club subscription paid by assessee on behalf of its managing director being in nature of personal expenditure, could not be allowed as deduction undersection37(1) - Held, yes [Para 10][In favour of revenue]".

6. In view of the above and considering the facts of the case, the disallowance made by the AO is confit and appellant's both the grounds are rejected."

9. The Ld. CIT(A) after having considered various case laws, sustained the impugned addition. In fact, the AO had made impugned additions on the basis that the expenditure so incurred was personal in nature. This finding in our view is erroneous. Undisputedly, the assessee is a company, it would have no expenses of personal in nature. The AO ought to have verified whether such expenses were incurred in the course of business and for the business of the assessee. The company being juristic person would not have any personal expenses and would not incur personal expenses unlike living being. The body corporate operates through living beings. The authorities below failed to advert to this fundamental question. Hon'ble Gujarat High Court in the case of Sayaji Iron & Engg.Co. vs CIT 253 ITR 749 [Guj.High Court] under the similar facts held as under:-

"There is one more aspect of the matter which requires to be considered. The assessee which is a private limited company is a distinct assessable entity as per the definition of "person" under section 2(31) of the Act. Therefore, it cannot be stated that when the vehicles are used by the directors, "even if they are personally used by the directors" the vehicles are personally used by the company, because a limited company is an inanimate person and there cannot be anything personal about such an entity. The view that we are adopting is

supported by the provision of section 40(c) and section 40A(5) of the Act."

9.1. Therefore, respectfully following the judgement of Hon'ble Gujarat High Court in the case of Sayaji Iron & Engg.Co. vs CIT (supra), the findings of the Ld.CIT(A) cannot be sustained as same is bereft of any specific finding about the expenses under question. It is well-settled that a bald assertion would not be sufficient concluding that the expenditure is personal in nature when admittedly, the assessee is a company.

10. In the light of the above discussion, grounds raised by the assessee are accordingly, allowed and the impugned addition is hereby, deleted.

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