

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA No.619/Bang/2021 |
| Assessment Year: 2017-18 |

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| M/s. Balkrishna Live Stock Breeders Pvt. Ltd. No.377/61, 2 nd Floor 43 rd Cross 9 th Main, 5 th Block Jayanagar Bengaluru 560 041. PAN NO : AAACB7373A | Vs. | ACIT Circle 1(1)(2) Bengaluru |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Smt. Pratibha R., A.R. |
| Respondent by | : | Shri Sankar Ganesh K., D.R. |

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|------------------------------|---|------------|
| Date of Hearing | : | 04.08.2022 |
| Date of Pronouncement | : | 04.08.2022 |

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A), NFAC Delhi dated 23.9.2021 for the assessment year 2017-18. The assessee has raised following constructive grounds:-

2. The learned CIT(A) ought to have appreciated that the Appellant is carrying on business for several years and the expenditure towards foreign travel was incurred for exploiting the expansion of business in foreign countries and accordingly 'the expenditure incurred was incidental to the business and thus was liable to be allowed as revenue expenditure under Section 37(1) of the Act.

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3. The learned CIT(A) failed to appreciate that the expenditure incurred was for the expansion of the business and not towards setting up of a new business to justify upholding the disallowance as made by the AO.

4. The learned CIT(A) ought to have appreciated that the case law cited fully supported the claim of the Appellant and accordingly he ought to have allowed the expenditure.

5. Without prejudice, the disallowance as upheld by the learned CIT (A) is arbitrary, excessive and ought to be reduced substantially.

2. The crux of above grounds is with regard to the disallowance of sum of Rs.13,51,168/- incurred towards foreign travel by assessee.

3. Facts of the case are that the appellant is a Private Limited Company, engaged in the business of hatchery and was dealing in layer operations during the year. The assessee had filed its return of Income for the assessment year 2017-18 declaring a net assessable loss of Rs. 17,15,042/-. The case was selected for scrutiny and during the course of the hearing, the assessee was served with a show cause notice proposing among other things to disallow the foreign travel expenses. The company had been looking to expand / explore opportunities outside country especially in Middle East since their operations in India are restricted by their franchise agreement. The travel cost was primarily incurred for travel to Middle East and a few poultry seminars held outside the country. The assessee has claimed the initial expenditure on travel for exploration of new markets and business opportunities outside the country as a legitimate expenditure of the Company expended wholly and exclusively for the purpose of business which are admissible u/s 37(1) of the Income-tax Act,1961 ['the Act' for short]. One of the leads resulted in a business opportunity in the form of a joint venture

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in Oman, namely Dar Al Tomouh Projects, LLC (DATP). The Joint venture initially crystalized in September 2016 and the actual investment was made on February 28, 2017. However, the travel costs incurred after September, 2016 were not claimed by the assessee as an expenditure and the same was recovered from the investee company.

Details of Travel Expenditure during the year was as below:

| | Rs. |
|--|------------------|
| Travel - Poultry Seminars held outside India | 1,07,282 |
| Travel - Business Expansion / Exploration in Gulf Markets (April 2016 to August 2016) | 12,43,886 |
| | 13,51,168 |
| Travel expenses incurred in connection with the Joint Venture (September 2016 to March 2017) - Recovered from DATP as 'Pre-Operative Expenses' | 13,86,377 |
| Total Travel Expenses | 27,37,545 |

3.1 During the year, the Company had claimed an expenditure of Rs. 13,51,168/- as an admissible expenditure u/s 37(1) of the Act and has not claimed the expenditure of Rs. 13,86,377/- incurred in connection with the joint venture. The Learned Assessing Officer did not agree with the contentions of the assessee and proceeded to make a disallowance of a sum of Rs. 13,51,168/- claimed u/s 37 of the Act by treating the travel expenses as capital in nature for the reasons stated in Para 4.4 of the Assessment Order. The submissions of the assessee for the reasons given by the AO are summarized as below:

- (a) AO: 'It is noted that the expenses claimed as foreign travel expenses are related to the investment made in 'Dar Al Tomouh Projects LLC,

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Oman. It is not confirmed that whether assessee is trying to expand the regular business options or just making investments'.

The travel expenses incurred were for expansion of existing business by exploration of export markets. It is incurred wholly and exclusively in connection with the business of the assessee. It is incorrect to draw an inference that the expenditure is related to investments made in 'Dar Al Tomouh Projects LLC, Oman'.

Actually, the travel expenditure incurred in connection with the investment in the Joint venture were not claimed as an expenditure by the assessee and were recovered from the investee company as it pertains to their 'pre-operative expenses'.

Though the new investment was made in February 2017, all expenditure incurred after September, 2016, when the joint venture was conceptualized has not been claimed as an expenditure. The expenditure incurred till August, 2016 are not related to the investment.

(b) AO: 'It is also noticed that in poultry business the geographical boundaries are fixed. : In that scenario, assessee making investment in foreign entity is to expand the business or just make an investment as an asset:

The fact is that the geographical restrictions as a franchise are applicable for its Indian operations. It is one of the reasons, the Company was trying to explore markets outside the country to expand its business.

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(c) AO: 'During the year whatever investment made is directly linked to creation of asset but not linked to assessee's business for the year under consideration'.

It is factually incorrect to classify the travel expenditure claimed as linked to the creation of asset, when in fact, the actual travel expenditure incurred in connection with the new venture is not even claimed as an expenditure by the assessee. The travel expenditure claimed are incurred prior to even finalization / crystalization of the joint venture and are expend wholly and exclusively in connection with the business of the assessee.

(d) AO: 'Just because investment made in some new poultry project it does not make it relates to the business for the period under consideration and also the revenue will be generated in future years, the claim of future is not acceptable. The foreign travel is directly linked to the investment made during the year is capital in nature:

It is well settled that the expenditure need not produce revenue immediately. Since it is usual that this expenditure may bear fruits in future. Just because an expenditure does not result in revenue immediately, it does not take the character of a capital expenditure. The important point to be noted is that the travel costs when incurred were meant for the expansion of the existing business by way of exploration of export market as their operations in India are restricted by franchise agreement.

3.2 Ld. A.R. submitted that various Courts have taken similar views to that of the assessee while deciding on 'Capital Vs. Revenue' in respect of travelling expenses (and Professional Charges etc.), Preoperative expenses and commercial

expediency for claim of deduction u/s 37 of the Act. A few of the decisions supporting the rationale and contentions of the assessee by inference are listed as below:

- (a) *CIT Vs Bombay Dyeing and Mfg. Co. Ltd. [1996] 85 Taxman 396 / 219 ITR 521 (SC).*
- (b) *S. A. Builders Ltd. Vs CIT [2007] 158 Taxman 74 / 288 ITR 1 (SC).*
- (c) *Elgi Equipments Ltd. Vs JCIT, Range-1, Coimbatore [2020] 120 taxmann.com 142 (Madras).*
- (d) *CIT Vs Shakti Sugars Ltd., [2010] 194 Taxman 91 / [2011] 339 ITR 400 (Madras).*
- (e) *CIT Vs Reliance Supply Chain Solutions Ltd. - IT Appeal No. 892 of 2014 dated July 5, 2017 (Bombay).*
- (f) *CIT Vs Evergrowth Telecom Ltd. [2013] 29 taxmann.com 273 (Born).*

4. On the other hand, Ld. D.R. submitted that assessee has incurred expenditure not for carrying out the day to day business of the assessee. On the other hand, it was incurred towards secure the investment from foreign country for its business so as to create the capital asset and not directly linked to the day to day carrying of business of the assessee. Being so, the said expenditure cannot be allowed u/s 30 to 38 of the Act. He relied on the order of the Ld. CIT(A).

5. We have heard the rival submissions and perused the materials available on record. In this case, assessee has incurred an amount of Rs.13,51,168/- towards foreign travel expenditure. This expenditure has been incurred by the assessee from April, 2016 to August, 2016. The contention of the assessee's counsel is that it has been incurred for securing the extended market for its product in

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foreign countries. For that purpose, assessee travelled to foreign countries so as to secure more sales in foreign countries in the product in which it is dealing. The Ld. A.R. submitted that the assessee during this period April, 2016 to August, 2016 it has carried out various market survey and met various dignitaries in foreign countries namely Oman, UAE, Bangkok, Doha, Bucharest and Thailand. Assessee also made visit to slaughter plant so as to establish similar slaughter center in India to maintain hygiene.

5.1 We have carefully gone through the submission made by the assessee. This statement made by assessee is unsubstantiated and not supported by any iota of evidence. On the other hand, there is a documentary evidence that assessee entered into an agreement between the partners in Dar AI Tomouh Projects LLC on 27.2.2017 for securing various investments only as a share capital in the assessee's company. So there is direct nexus between assessee's undertaking foreign travel and incurring expenditure and entered into collaboration agreement with the Dar AI Tomouh Projects LLC on 27.2.2017. Further, we have noted that the assessee furnished only supplementary agreement with the above party and not furnished the main agreement also. From this, we can infer that the assessee wants to hide the real intention of going abroad for going foreign countries and incurring expenditure. In our opinion, carrying out foreign travel directly relating to securing the capital investment in the assessee's business and this expenditure incurred by the assessee cannot be in the revenue nature. On the other hand, it is capital in nature. Being so, it cannot be allowed u/s 30 to 38 of the Act as this expenditure has not been laid down wholly and exclusively for the purpose of assessee's business in day to day operation of the same. Hence, said expenditure is not to be treated as a revenue expenditure while computing income of the assessee. Accordingly,

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we have no hesitation in confirming the order of lower authorities on this issue.

6. In the result, the appeal filed by the assessee is dismissed.
Order pronounced in the open court on 4th Aug, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 4th Aug, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.