IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 864/DEL/2023
Assessment Year: 2017-18

Zheng Yuan Mobiles Pvt. Ltd., 2nd & 3rd Floor, Razia Villa, South Gandhi Maidain, Phulwari, Bihar-800001 PAN- AACCO2559D	Vs	DCIT, Central Circle-30, New Delhi.
APPELLANT		**RESPONDENT**
Assessee represented by	Ms. Mashendra Kumar Mashi, CA	
Department represented by	Ms. Sapna Bhatia, CIT(DR)	
Date of hearing	08.01.2024	
Date of pronouncement	11.01.2024	

O R D E R

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 28.02.2023, for the assessment year 2017-18, passed by the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred as "learned First Appellate Authority" or in short "FAA"), in appeal no. 10527/2019-20, arising out of assessment order dated 19.07.2019 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the "Act"), passed by the ACIT, Circle Exemption 1(1), Delhi, hereinafter referred to as the "AO").

2. The assessee is a private limited company, registered under the Companies Act, 2013 and engaged in the business of distributorship of OPPO Mobiles India Private Ltd. The assessee's return of income at loss was selected for scrutiny to examine the following issues:

1. Low income in comparison to high loans/advances/Investment in shares, appearing in Balance Sheet.
2. High Revenue from operations (including other income) and no scrutiny in preceding 5 assessment years.
3. Large refund claimed out of advance tax.
4. Large value claim of refund.

3. During assessment proceedings, learned AO was not satisfied with the genuineness of the expenditure on account of business establishment expenses, conveyance expenses, Guest House expenses, maintenance expenses, mobile & internet expenses, other expenses, travelling expenses, show room expenses and staff welfare expenses of Rs. 3,39,62,041/- and observed in para 4.3 as follows:

> "*4.3 Disallowance on account of non-maintenance of proper Bills and Vouchers*
>
> *On perusal of Profit and Loss Account for FY 2015-16, it appears that the assessee has debited expenses in Profit & Loss Account under different heads.*

During the course of assessment proceeding, the assessee was asked to furnished ledgers alongwith supportive bills & vouchers of expenses such as Business Establishment Expenses, Conveyance Expenses, Guest House Expenses, Maintenance Expenses, Mobile & Internet Expense, other expenses, Travelling Expenses, Show Room Expenses, Staff Fund Expenses claimed in Profit & Loss Account and was asked to furnish reasons for such claim.

However, the assessee had not furnished ledgers & all supporting bills & vouchers of expense incurred towards the expenses claimed in Profit & Loss Account.

On verification of ledgers with bills and vouchers related to the above claimed expenses, following things were observed:

1. There was a non-maintenance of proper bills & vouchers,

2. Most of the vouchers are internally vouched.

3. Even, the produced vouchers were not fully supported with correct bills and hence some the claim didn't match with evidence.

4. It is settled law that assessee has to maintain proper bills and vouchers of the expenses in order to make it amenable to verification.

5. Further, it is found that assessee has made payment to meet the above expenses mostly in cash below the threshold limit of Rs. 20,000/-

6. So, genuineness of above expenses for business purpose remained unverified in absence of supporting evidences. In this situation, the inflation of expenses can't be ruled out.

7. Few expenses such as Guest House Expenses, Mobile and Internet Expenses claimed by the assessee, which is something personal in nature,

8. Mostly bills and vouchers were devoid of receiver signature,

9. Proper name and address of receivers were missing in most of the vouchers,

10. Few expenses such as sweet and birthday cake for staff, gift to staff festival and water to staff are total personal in nature and not laid out for the purpose of business and profession.

Considering the above facts, it appears that the expenditure incurred by the assessee during the course of business operation is excessive and unreasonable and is liable to be disallowed. In this regard, following case laws are hereby relied upon as under:

1. Lakshminarayan Madan Lal Vs. CIT(SC) 86 ITR 439

2. Swadesh Cotton Mills Co. Ltd Vs. CIT(SC) 63 ITR 57

3. Lakshmiratan Cotton Mills Co. Ltd Vs CIT(SC) 73 ITR 634

The submission of the assessee was given thoughtful consideration and keeping in view the above facts, the expenses incurred on the following heads are hereby disallowed @30% of total expenses:

Sl. No.	*Heads of Expenses*	*Amount of Expenses (in Rs.) claimed in Profit & Loss Account*	*Disallowance of expenses @ 30%*
1	*Business Establishment Exp*	*4585168*	*1375550.4*
2	*Conveyance Expenses*	*881431*	*264429.3*
3	*Guest House Expenses*	*2045831*	*613749.3*
4	*Maintenance Expenses*	*1201142*	*360342.6*
5	*Mobile and Internet Exp*	*1479960*	*443988*
6	*Other Expenses*	*4651598*	*1395479.4*
7	*Travelling Expenses*	*4222645*	*1266793.5*
8	*Showroom Expenses*	*352115*	*105634.5*
9	*Staff Welfare Expenses*	*14542151*	*4362645.3*
	Total	*33962041*	*10188612.3*

As the above said expenses is unreasonable, excessive, few are personal in nature and wholly and exclusively is not utilized for the business purpose as per section 37(1) of Income Tax Act, 1961 and is hereby added back to the total income of the assessee."

4. Learned CIT(A) sustained the addition with following relevant finding in para 7:

"7. I have carefully examined the assessment order and the submissions of the appellant. The Assessing Officer in the assessment order has observed that the expenses claimed by the appellant under various heads are not adequately supported by bills and vouchers. The AO verified the ledgers, bills and vouchers submitted by the appellant during the assessment proceeding and remarked that the proper bills and vouchers are not maintained by the appellant. Most of the vouchers are internal vouchers and not supported by the proper bills. Payments are made in cash and expenses are also of personal in nature. The bills and vouchers do not bear the receipt or signature of the receiver of the appellant. Accordingly, the AO has held that 30% of the expenses under various heads as reproduced in the assessment order are not fully allowable and had accordingly disallowed 30% of the expenses on estimation basis. The appellant in his written submission has stated that the books of accounts are duly audited. The appellant had discharged its primary onus in respect of claim of the expenditure before the AO. It was further stated that the AO was required to prove that the expenditure claimed by it was of non-business in nature but he had disallowed 30% on estimation basis.

7.1 I have carefully examined the assessment order and the submission of the appellant. As per the provisions of section 37(1) of the Income-tax Act any expenditure (not being the expenditure covered in section 30 to 36 and not being in the nature of capital and personal expenditure), laid out or expended "wholly and exclusively for the purpose of business is allowable deduction. It is therefore, important to see that the expenditure which has been claimed by the appellant was incurred "wholly and exclusively" for the purposes of business. The onus is on the assessee to prove that the expenses claimed in the Profit &Loss A/c are correct, have been wholly and exclusively incurred for the purposes of business and no otherwise. During the appellate proceedings the appellant has submitted ledger of various *heads of expenditure which have been called by the AO for verification. Total expenditure under these heads amount to Rs. 3,39,62,014/-. On cursory perusal of these ledgers, it may be noted that more than 90% of these expenses are incurred in cash. There are several instances in which the cash payments have been made by the appellant in excess of Rs. 20,000/- in contravention of provision of Section 40A(3) (for instance: under the head business dinner: cash payment of Rs.35,464/-on 4 October, gift for DB: Rs.31,500/- on 4th October, business dinner: Rs. 30,172/- on 28.08.2016, Rs.22,500/- on 24th September, Rs.23,500/- on 8th October, guest house expenses: Rs.72,100/- on 2nd March, kitchen material: Rs. 26,726/- on 19th November, Rs. 20,000/- on 26th August, repair and maintenance of guest house: Rs.21,495/-, on 4th August, daily use product: Rs. 26,000/- on 21 August similarly, miscellaneous expenses have been broken down on 26.11.2016 into several payments of Rs. 17,500/- and so on). The appellant has also booked expenses as "advance to staff (petty cash)" in each of head expenditure on several occasions. The advances given to staff cannot be booked as expense unless they are actually incurred and supported by bills and vouchers. The appellant failed to substantiate of the advances to staff were eventually incurred expenditure. The appellant has not been able to counter the findings of the AO that the expenses booked under various heads are not supported by proper bills and vouchers and that the vouchers are not signed by the receivers, bills are not in proper format etc. In these circumstances, 1 find that the appellant has not been able to justify that the expenses were booked correctly and were incurred wholly and exclusively for the purposes of business.*

7.2 The AO disallowed expenses to the extent of 30% of the above referred heads after pointing out several anomalies in the submission/records of appellant such as 'personal in nature; not supported by bills', "not incurred/expended" and not expended for business etc. Several instances have been noted where the expenses were incurred in violation of provisions of Section 40A(3). Some of them have been mentioned supra. In these circumstances, I find that the disallowance made by AO @ 30% subsuming all such violations/anomalies is very fair and reasonable. Accordingly addition of Rs. 1,01,88,612/- made by AO is confirmed."

5. The assessee is in appeal, raising following grounds:

"*1. For that the Id CIT(A) is erred in dismissed the appeal against assessment order,which disallowed 30% of the Expenditure under the head different head of expenditure on ad hoc basis amounting Rs. 1,01,88,612/- in spite of all bills and vouchers which is genuine business expenditure. that the order of the Id CIT(A) is bad in law as well as in facts.*

2. For that the Id CIT(A) has gravely erred in wrongly interpreting the facts and records available apparently.

3. For that the Id CIT(A) has gravely erred in wrongly interpreting the relevant provisions of the IT Act, 1961.

4. For that any other ground that may be urged in the course of hearing."

6. Heard and perused the record.

7. Learned AR submitted that learned tax authorities below have failed to consider that expenditures are as per the Auditor's financial account and all relevant ledgers, bills and vouchers were produced before the tax authorities and no specific instance has been indicated by the AO that any particular expenditure is not in the course of business. Learned AR pointed out that learned CIT(A) has made a very sweeping observation that 90% of the expenditures are incurred in cash and gave a table available at pages 123 to 145 of the paper book-I. to show that out of total expenditure of Rs. 3,39,62,041/-, the payment through bank is around Rs. 2,17,60,658/-, which makes 64%. He submitted that cash expenses of Rs. 1,22,01,387/- out of total expenditure of the company around Rs. 592,27,96,224/- is negligible and that cannot be the basis for making ad hoc disallowance. It was submitted that cash expenses were primarily on day to day expenses on food etc. and in fact in the Auditor's report suo motu made

disallowance of such cash expenses which have not been considered. It was submitted that advance to staff was for staff expenditure and such advance was adjusted in the expenditure head once the bill was submitted. Learned AR also took the Bench across various vouchers produced in the paper book to submit that all expenditure are duly supported by vouchers.

8. Learned DR, on the other hand, relied on the orders of learned tax authorities below and submitted that the assessee had failed to justify the expenses which are more in the nature of personal expenditure, like food and beverages. It was submitted that in any case matter may be restored to AO for verification of the vouchers etc.

9. We have given thoughtful consideration to the material on record and observe that the learned tax authorities without actually pointing out any deficiency in the books of account have inferred that the expenses are excessive and unreasonable so as to disallow to the extent of 30%. The order of learned tax authorities does not indicate if the financials of the assessee were otherwise questioned on any account. The assessee has shown revenue from operation as on 31.03.2017 at Rs. 576,98,65,384. The same has been accepted by the Revenue and even when the scrutiny was taken up, for analyzing low income in comparison to

high loans etc. and high revenue from operations, but except for observing that there was non-maintenance of proper bills and vouchers to disallow expenses @ 30% on ad hoc basis, no other conclusion was drawn with regard to profit calculation reflected in the financials.

10. The orders of learned tax authorities make it apparent that on observing that the expenses have been booked under various heads are not supported with proper bills and vouchers and vouchers are not signed by receivers, bills are not in proper format, ad hoc disallowance was made. However, Ld. Tax Authorities were supposed to consider the nature of the business of the assessee being in distribution business of very competitive project like mobile phones through distributors in the States of Bihar, Jharkhand and Uttrakhand and on that account if certain expenditures, on day to day basis for running the distributorship and employees network were not in proper vouchers formats or signed, that alone cannot be a justification for disallowance on ad hoc basis to extent of 30%.

11. The prayer of learned DR that issue should be restored to AO is also not considerable as it is not established that assessee is relying anything which was not otherwise before the learned tax authorities below. All that is established is that without pointing out anything specific defect on wholesome basis certain part of

the expenses has been discarded on estimate basis. Same is not sustainable under the law.

12. Thus, we allow the grounds raised by the assessee and the appeal of the assessee is allowed. Disallowance made by the learned AO stand deleted.

Order pronounced in open court on 11/01/2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI