

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER

AND

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 5064/Del/2018
(Assessment Year : 2013-14)

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| Nijhawan Travel Services Pvt. Ltd. F 53, Bhagat Singh Market, New Delhi 110001 PAN : AAACN0150D (APPELLANT) | Vs. | Dy. Commissioner of Income Tax Circle 18(2) New Delhi 110002 (RESPONDENT) |
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| Appellant by | Sh. A.K.Srivastava, CA |
| Revenue by | Ms. Rajareswari R, Sr. DR |

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| Date of hearing: | 27.04.2023 |
| Date of Pronouncement: | 03.05.2023 |

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 27.04.2018 of CIT(A)-36, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 123/17-18 arising out of an appeal before it against the order dated 18.03.2016 passed u/s 143(3) of the

Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Cir-18(2), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee filed return declaring total income of Rs. Nil after adjustment of brought forward business loss with the current year income. The tax was paid under the MAT provision on book profit. The case was selected for scrutiny. The assessee is engaged in the business of running of stores and selling of branded items like 'Adidas', 'Benetton' and other brands. The documents and replies filed by the AR of the assessee company in response to various queries raised with regard to the expenses/ income booked in the Profit and Loss account were considered by Ld. AO and amongst other disallowances, Ld. AO had made disallowance on account of advances return of Rs. 15,19,425/- and loss from Chit Fund Rs. 3,14,000/- and the Ld. CIT(A) had sustained the same. Therefore, the assessee is in appeal before the Tribunal raising following grounds qua these additions :

“1. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs. 15,19,425/- being advance/ royalty written off.

2. That on the facts and circumstances of the case and in law, the learned Commissioner of Income –tax (Appeals) erred in upholding the addition of Rs. 3,14,000/- incurred on account of loss on Chit Fund.

3. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) ought to have directed the Assessing Officer to set off the carried forward loss, as per provisions of section 72 of the Act.

4. That the lower authorities failed to appreciate the nature of appellants' business activities carried out by the Appellant and in arriving at the disallowances made in determining income.

That the Appellant craves leave to add, alter, modify, vary, delete any ground of appeal before or at the time of hearing.”

3. Heard and perused the records.

3.1 In regard to **ground no. 1** it was submitted that the assessee had entered into a Licence Agreement with THRIFTY dated 01.02.2007 for non-exclusive licence to use the Licensed system and Marks. As per initial agreement licence fee of US \$90,000 dollars was payable and a renewal fee and short term and long term royalty were payable at varied rates. In terms of agreement, the assessee had paid US \$ 90,000 dollars and treated the amount equal into Rs. 40,51,800/- as advance to be written off over the period of Licence. An amount of Rs. 25,32,375/- was written off till 31.03.2012 leaving a balance of Rs. 15,19,425/-. Thereafter, an amendment to the Master Licence Agreement was made on 18 July, 2011, reducing the Royalties and Advertising Fund Contribution. It is claimed that as business was incurring loss and therefore an agreement was entered into on 31 May, 2012 to terminate the Licence and payment of Royalty of Rs. 11,841,417/- as was outstanding on 31.03.2012. To satisfy all payment/ obligations it was agreed by the assessee as a licensee to pay THRIFTY the net sum of US \$ 31,200 after deducting tax at source of US \$ \$7,800 being 20% of the gross amount of US \$39,000 equivalent to 13 months Royalty. Tax at source was paid on 28.03.2013.

3.2 It was submitted on behalf of the assessee that Ld. AO erred in observing that there was an opening balance of Rs. 15,19,425/- and that in terms of the termination agreement dated 12.05.2012, he formed an opinion that additional payment of US \$ 39,000 was to be made. It is submitted that Ld. AO had erroneously held that the assessee had reported the amount not as payment on

termination but as advance made to THRIFTY. It was submitted that even the ld. CIT(A) failed to take cognizance of the explanation of facts.

4. Giving thoughtful consideration to the submissions and matter on record the Bench is of the considered opinion that the orders of Ld. Tax Authorities below are completely silent to the aforesaid facts of assessee entering into an agreement of termination of licence on 31.05.2012 subject to payment of US \$39,000 on account of outstanding payment obligations as on 31.05.2012 and that was not payment over and above the agreed payments. In the light of aforesaid, the Bench is of considered opinion that the issue requires to be restored to the files of Ld. AO to take into consideration the aforesaid factual aspects arising out of the termination agreement dated 31.05.2012 and benefit the assessee.

5. In regard to the **ground no. 2** it can be observed that the ld. Assessing Officer relying judgment to Hon'ble Punjab and Haryana High Court in *Soda Silicate and Chemical Works vs. CIT 179 ITR 588 (P&H)* held that the loss on account of Chit Fund during the financial year is covered by the principal of Mutuality and disallowed the claim. Before Ld. CIT(A), assessee had submitted that the assessee has offered the discount received in earlier years as its income but the same was not considered by Ld. CIT(A) on the ground that each assessment year is a separate year and the addition was confirmed.

6. During the course of hearing, reference was made to CBDT Circular no. 1175 of 16.05.1978 wherein it was directed that the members of Chit fund who get the money earlier from the chit will necessarily have to contribute more which means they incur loss which is nothing but interest taken for money as an advance.

7. Certainly, in the light of aforesaid instructions of the Board loss on account of Chit fund has to be allowed however, subject to satisfaction that the Chit Fund money is utilized for the purpose of business. In the light of aforesaid the issue arising out of the ground no. 2 also deserves to be restored to the files of Ld. AO to inquire into the question of use of the Chit Fund money for the purpose of business and accordingly, allow the same as business expenditure.

8. In regard to **ground no. 3**, although initially Ld. AR had submitted that he is not pressing the ground however considering the fact that the issue no. 1 and 2 are restored to the files of Ld. AO, the ld. AO shall also let set off carry forward loss as per provisions of section 72 of the Act.

Consequently, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 3rd May, 2023.

Sh/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:-03.05.2023

Binita, SR.P.S

Copy forwarded to:

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

Sh/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

AR, ITAT
New Delhi