आयकर अपीलीय अधिकरण, बी खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL,MUMBAI-B,BENCH

सर्वश्री जोगिन्दरसिंह, न्यायिक सदस्य **एवं** राजेन्द्र, लेखा सदस्य

Before S/Sh. Joginder Singh,Judicial Member & Rajendra,Accountant Member

आयकर अपील सं/.ITA No.2128/Mum/2013,निर्धारण वर्ष/Assessment Year-2006-07

ACIT-24(1) C-13, R.No.503, Pratyakshakar Bhavan,Bandra(E) Mumbai-51	Vs	Mubarak Kasam Momin Prop. Opal Stone Industries 101,Lovely House,Vaishali Nagar Jogeshwari (W)Mumbai-400 102. **PAN: AAEPM 5179 F**

(अपीलार्थी /Appellant) (प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by **:Shri Devendra A. Mehta**

राजस्व की ओर से/ **Revenue by** **:Ms. Radha K. Narang-Sr.AR**

सुनवाई की तारीख/ Date of Hearing **: 16**- 06 -2015

घोषणा की तारीख / Date of Pronouncement **: 16**-06-2015

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-</u>

Challenging the order dt.11.01.2013 of the CIT(A)-34 the Assessing Officer(AO), has raised following Grounds of Appeal:

"1.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 4,38,609/- made by the A.O towards foreign tour travel expenses as assessee failed to prove relation of foreign travel with business.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 4,70,758/-- made by the A.O out of conveyance, travelling & telephone expenses despite assessee failing to prove genuineness of claim and its relation with business.

The appellant prays that the order of the CIT(A) be set aside and matter may be decided according to law. The appellant craves leave to amend or alter any ground or add new ground which be necessary."

Assessee,an individual,is proprietor of M/s.Opal Stone Industries and is engaged in the export of granite and marbles.He filed return of income on 27.10.2006 declaring income of Rs.26.94 lacs. The AO completed the assessment,on 31.12.2008,u/s. 143(3) of the Act,determining the income of the assessee at Rs.41.15 lacs.

2.The first ground of appeal is about deleting the addition of Rs.4.38 lacs made by the AO toward foreign tour expenses. During the assessment proceedings,the AO found that the assessee had shown turnover of Rs.12.92 crores and had debited Rs.21.93 lacs towards foreign travel expenses. He called for an explanation from the assessee in that regard. Vide his letter,dated 10.12.2008,the assessee submitted that as an exporter of granite and marbles frequent trips have to be made by employees of the assessee to gauge the market trends and develop new client, that the expenses claimed were around 1.7% of the total turnover, that no personal element was involved in the foreign travel expenses. The AO held that the export income was generated from

these countries namely Kuwait, Nigeria and UAE, that the foreign travel had been undertaken to destinations such as Germany,Egypt, HongKong,South Africa where the assessee had not generated any export income. In the absence of correspondence between overseas clients and trips taken by Zulfikar Momin, the brother of the assessee the AO held that foreign travel expenses was not incurred wholly and exclusively for the business of the asessee. He made a disallowance of Rs.4,38,609/- (20% of the expenses).

3.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority(FAA).Before him, it was argued that the expenses were incurred for business purposes only and were quite reasonable considering the volume of the business, that the sale for the year under appeal had increased to Rs.12.92 crores from Rs.6.01 crores in the immediately preceding year, that a businessman was the best judge of his affairs and knew the best way to run his business, that the AO could not step into his shoes and guide him about the expenditure, that the reasonableness, commercial expediency and justifiability of expenditure had to be judged from the point of view of a businessman, that his brother was an employee and had no other source of income or occupation other than the employment with the assessee's business, that all the details of foreign travel expenses were furnished during the assessment proceedings after considering the submission of the assessee and the assessment order,the FAA held that during the assessment year the assessee had received export proceeds of Rs.12.92 crores, that the details of party-wise receipts indicated that he had exported marble/granite to countries like UAE, Kuwait, Nigeria, USA and Argentina, that the foreign travel had been undertaken by the employees of the assessee to finalise the latest trend in the market, to explore new customers and find out their requiremen - ts etc., that to explore the new business opportunities foreign travel was required, that there was business expediency for making such trips, that brother of the assessee was one of the full time senior employee of the assessee's proprietary business,that expenditure incurred for its employee has to be allowed, that he had travelled to various countries for supply of marble and granite, that the purpose of travel to these destinations was to extend the business. Finally,he deleted the disallowance made by the AO.

4.Before us,the Departmental Representative(DR)stated that the assessee had produced the necessary details.The Authorised Representative(AR)supported the order of the FAA.We have heard the rival submissions and perused the material before us.We find that the AO had partly disallowed the foreign travel expenses incurred by the assessee,that he was of the opinion that there was no justification for incurring expenditure,that the brother of the assessee had travelled aborad,that the FAA had deleted the addition made by the AO.We find that the FAA has given a categorical finding of fact that the export had increased from Rs.6 Crores to Rs.12 Corers during the year under appeal. The AO had totally ignored the fact.The FAA had found that there was direct link between the foreign travel expenses and the exports.The countries visited by the employees of the assessee including his brother are those from where he received export orders.It is not necessary that every visit should result in export order in the same year.Considering these facts we are of the opinion that the order of the FAA does not suffer from any legal infirmity. Upholding his order,we decide ground no.1 against the AO.

5.Next ground of appeal is directed against deletion of disallowance of Rs.4.07 lacs. During the assessment proceedings the AO found that the assessee had incurred expenses of Rs.47,87,625/- towards various expenses like conveyance, telephone, sales promotion and incentive etc. He held

that some of the expenditure had been incurred in cash that the assessee was not able to give satisfactory explanation in that regard, that possibility of personal use could not be ruled out. He disallowed 10% of the expenditure amounting to Rs.4,70,758/- on adhoc basis.

6.Aggrieved by the order of the AO,the assessee argued before the FAA that he was maintaining regular books of account that were duly supported by vouchers and were subjected to statutory audit,that expenses were fully vouched and were incurred wholly and exclusively for the purpose of business, that expenses were not in the nature of capital or personal, that the AO had not pointed out any irregularity in the books of account and vouchers produced before him for verification, that the disallowance was made purely on adhoc basis, that the AO had not drawn any evidence on record to show that expenses were personal in nature. The assessee relied upon several cases delivered by various benches of the tribunal.

7.Deleting the addition made by the AO, the FAA held that the AO had not brought any material to show that the element of personal nature was involved in the expenditure, all the cash vouchers were supported by necessary documentary evidences and were subject to statutory audit that the AO had not pointed out any discrepancy in the vouchers, there was no basis to hold that the expenditure was not incurred wholly and exclusively for the business purposes,that the AO presumed that the assessee might have incurred certain expenditure for non business purposes,that disallowance made on presumption could not be sustained.Finally,he deleted the addition made by the AO.

8.Before us,the DR and the AR supported the order of the AO and the FAA respectively.We find that the ad hoc disallowance made by the AO was not based on any scientific or logical basis. It is a fact that the books of the assessee are audited and no discrepancy was pointed out by the AO about the accounts maintained by him.Cash vouchers were supported by the documentary evidences.The AO had disallowed various expenses as he was of the opinion that personal element could not be ruled out.In our opinion,it is a very general and vague statement and it cannot form basis for making addition.The AO should have brought on record some positive evidence to prove that part of the expenditure was not incurred wholly and exclusively for the business of the assessee.In absence of such evidences,the FAA had rightly allowed the appeal filed by the assessee.As far as the reasonableness, commercial expediency of the expenditure incurred by an assessee is concerned we are of the opinion that the AO is not the right person to decide the issue-an assessee has to take the final decision in that regard.We find that in the matter of S A Builders(288ITR1)the Hon'ble Apex Court has held as under:

> "*Once it is established that there was nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits."*

Similarly,the Hon'ble Delhi High Court has,in the case of Dalmia Cement(254ITR377),held as follow:

> "*Under section 37(1) of the Income-tax Act, 1961, the jurisdiction of the Revenue is confined to deciding the reality of the business expenditure, viz., whether the amount claimed as deduction was factually expended or laid out and whether it was wholly and exclusively for the purpose of the business. It must not, however, suffer from the vice of collusiveness or colourable device. The*

reasonableness of the expenditure could be gone into only for the purpose of determining whether, in fact, the amount was spent. Once it is established that there was nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximise his profits."

In short,the disallowance made by the AO cannot be held to be justified on any basis.Therefore, confirming the order of the FAA,we decide the ground no.2 against the AO.

As a result,appeal filed by the AO stand dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 16th,June,2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 16 जून,2015 को की गई ।

Sd/-	**Sd/-**
(जोगिन्दरसिंह/ Joginder Singh)	**(राजेन्द्र / RAJENDRA)**
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई/Mumbai,दिनांक/Date: 16.06.2015

व.नि.स.*Jv.Sr.PS.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

5.DR " " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, **ए** खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**