

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1044/Kol/2016
Assessment Year :2008-09

M/s MKJ Tradex Ltd. Unit-1, 3 rd Floor, Sagar Estate, 2 Clive Ghat Street, Kolkata-700001 [PAN No.AADCM 5953 G]	V/s.	DCIT, Circle-4(2), Aayakar Bhawn, 4 th Floor, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.K. Tulsian
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	09-01-2018
घोषणा की तारीख/Date of Pronouncement	14-02-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolkata dated 27.04.2016. Assessment was framed by DCIT, Circle-4 Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 02.12.2010 for assessment year 2008-09.

Shri S.K. Tulsian, Ld. Advocate appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. The assessee has raised the following grounds:-

- “1. That the learned CIT(A) erred in confirming addition of advertisement expense of Rs.6,09,402/ made by the AO, not appreciating the fact that the said expense incurred in publishing the achievement of the MD of the company in the newspapers has added to the brand value of the company and as such was a commercial expediency to promote the business.*
- 2. That the learned CIT(A) erred in confirming addition of membership fees paid to club of Rs.52,555/- made by the AO, not appreciating the fact that the said expense was incurred for the purpose of promoting the business.*
- 3. That the order of the CIT(A) should accordingly be modified and the assessee be granted necessary relief as prayed for in this appeal.*
- 4. That, the appellant craves leave to alter, amend, rescind and substitute any of the above-mentioned grounds and add any further grounds before or at the time of hearing of the appeal.”*

3. First issue raised by assessee in ground No.1 is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹6,09,402/- on account of expenditure incurred on advertisement.

4. Briefly, the facts of the case are that assessee is a private limited company and engaged in business of trading in stainless steel and allied products. The assessee in the year under consideration has claimed expense of ₹6,09,402/- for celebrating French National Day. During the course of assessment proceedings, AO observed that assessee had no export business to France. Therefore, the expense claimed by it have not been incurred in connection its business activity. Accordingly, the amount of ₹6,09,402/- was disallowed and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that it has incurred an expense of Rs. 5,91,402/- only for publishing the award conferred on Mr. Mahendra Kumar Jalan, Chairman and Managing Director (MD) of the company by the French Embassy of India. It was published in regional daily newspaper “Anandabaza patrika” published on 21.06.2007.

Besides the above an expense of Rs.18,000/- was incurred for artwork, French translation and creative work in connection with the said advertisement in the daily newspaper “Ananda Bazar”.

The copy of the invoices and a copy of the said newspaper cutting are enclosed at page 1-6 of the paper book. Mr. Mahendra Kumar Jalan, Managing Director of the assessee-company was Honorary Consulate De France for the period February, 2003 to August 2008. He was conferred the award of Officer de l'Ordre national de merite by Jacques Chirac, President of France for his pivotal role as Honorary Consul of France in Kolkata, in promoting Trade and Culture between France and India. The said award was awarded to him by Dominique Girard, Ambassador de France en Inde, French Embassy in India in a special ceremony held in Kolkata on 21.06.2007. Since the award was of a great honour for the assessee-company also, it was decided to publish the same in the daily newspaper so as to disseminate the information about the award among the general public. The said advertisement is akin to sales promotion expenses of the assessee-company in as much the general public was made aware of the high influential position and achievements of the M.D of the company and as such is allowable u/s. 37(1) of the Act. It is an accepted fact that the Chairman-cum-MD of the assessee-company holds a pivotal position in the assessee-company and is in-charge of all the major decisions of the assessee-company. The expense incurred in publishing the achievement of the MD of the assessee-company in the newspapers has added to the brand value of the assessee-company and as such was a commercial expediency to promote the business. Since the advertisement expense incurred is directly related to the business of the assessee-company. The same ought to be allowed u/s. 37(1) of the Act. In this regard, Ld. AR of the assessee submitted that it would be befitting to discuss section 37(1) of the Act. Section 37 is a residuary section for allowability of business expenditure and the same is reproduced below:-

“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.”

Condition for allowance u/s 37(1)

- a) Such expenditure should not be covered under the specific section i.e. sections 30 to 36;
- b) Expenditure should not be of capital nature;
- c) The expenditure should be incurred during the previous year;
- d) The expenditure should not be of personal nature.
- e) The expenditure should have been incurred woe for the purpose of the business or profession;
- f) The business should be commenced.

If all the above conditions are satisfied, the assessee is entitled to claim deduction u/s. 37 of the Act. further, it will be worthwhile to discuss the meaning of the words 'advertisement' which has been defined by the Hon'ble jurisdictional High Court in the case of *Sarada Plywood Industries Ltd. vs. CIT* (1999) 2328 ITR 354 (Cal) wherein the Hon'ble court has held:-

"The word 'advertisement' has been stated to mean a notice given in a manner designed to attract public attention. Any expenses incurred by way of advertisement must be considered from the point of view of the assessee and not from any other angle."

In the present case, all the conditions stipulated in section 37(1) of the Act are duly met. As such the expense incurred in advertisement in the newspapers amounting to Rs.6,09,402/- is an allowable expense. The AO disallowed the said expense on the sole pretext that the assessee-company has made no export to France. In this regard, it is submitted that the award has given to the MD of the company in a special ceremony held in Kolkata on 21.06.2007 wherein all the top industrialists of India were present. Even if the assessee has not procured orders overseas, this award has added to the brand value of the assessee-company and increased the revenue from operations in the domestic market. Further, Mr. Mahendra Kumar Jalan was one of the members sitting on the dais and representing the country in the Annual French National Day Celebration held on 14.07.2007 in Kolkata and

addressed his speech to the top industrialists in India and Embassy of France. In view of the above, it is humbly requested before your honour to delete the disallowance of ₹6,09,402/- incurred in relation to advertisement expenses. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing as under:-

'I have considered the submissions of thee AR of the appellant. The AO has mentioned the assessee has got no export to France nor any business connection. The AR has also not proved any business connection with these expenses debited to profit and loss account during the appellate proceeding. Hence, the addition as made by the AO is confirmed.'

Aggrieved by this, the assessee has come up in appeal before us.

6. Ld. AR for the assessee has filed paper book which is running pages from 1 to 30 and reiterated the same submission that were made before Ld. CIT(A).

On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

7. We have heard the rival contentions of both the parties and perused the material available on record. The undisputed facts are as under:-

- a) Shri Mahendra Kumar Jalan is the Managing Director of the assessee-company.
- b) The award was conferred by the President of France to Shri Mahendra Kumar Jalan in promoting the trade and culture between France and India which is evident from the certificate enclosed on page 6 of the paper book
- c) The news of the award was published in the local newspaper as evident from the newspaper cutting page 5 of the paper book. However, the cost incurred by assessee on the advertisement was disallowed by the AO on the ground that there was no export to France. Therefore, the impugned expenses are not connected with the business of assessee.

d) The Managing Director of the assessee-company plays very pivotal role in the company which *inter alia* includes the following:-

- Formulating and successfully implementing company policy.
- Directing strategy towards the profitable growth and operation of the company.
- Developing strategic operating plans that reflect the longer-term objectives and priorities established by the board.
- Maintaining an ongoing dialogue with the Chair of the board.
- Putting in place adequate operational planning and financial control systems.
- Ensuring that the operating objectives and standards of performance are not only understood but owned by the management and other employees.
- Closely monitoring the operating and financial results against plans and budgets.
- Taking remedial action where necessary and informing the board of significant changes.
- Maintaining the operational performance of the company.
- Monitoring the actions of the functional board directors.
- Assuming full accountability to the board for all company operations.
- Representing the company to major customers and professional associations.
- Building and maintaining an effective executive team.

From the above, it is inferred that the role of the Managing Director is very crucial for the success of the assessee-company. Thus, the award conferred to the MD is going to increase the image of the assessee-company at national /international level in the area of the business connections.

In rejoinder Ld. DR has not brought anything on record suggesting that the MD of the assessee-company was associated with any other activity or group of companies.

It is well settled law that the expenditures incurred by the assessee exclusively for the purpose of business are allowed as deduction u/s. 37(1) of the Act. In our view, the reason given by the AO that the no business activity was carried on by the assessee with France is not tenable in view of the fact that allowability of the expenditure does not depend upon the outcome of the expenditure. Rather, the expenditures are incurred by the business enterprise for the growth of the business and it is not necessary that all the expenditures would entail positive result to the company. In the instant case, the expenditure has been incurred and claimed by the assessee under the head “**advertisement**” which has not been disputed by the Revenue. The meaning of the award “**advertisement**” has been defined by the Hon'ble jurisdictional High Court in the case of *Sarda Plywood Industries Ltd. vs. CIT* (1999) 238 ITR 354 (Cal), wherein the Hon'ble court has held:-

“It is now a well settled principle of law that any expenses incurred by way of advertisement must be considered from the point of view of the assessee and not from any other angle.

Once it is found that the expenditure had been, as a matter of fact, incurred by the assessee for publicity or advertisement, it is not for the department to consider whether commercial expediency justified the expenditure. Reasonableness of the expenditure can be gone into only for the purpose of determining whether in fact the amount was spent.

In this view of the matter, the Tribunal was not justified in disallowing part of said expenditure.”

In the above proposition, we feel that the impugned expenditure has been incurred by assessee exclusively for its business activity and therefore the same is eligible for deduction us 37(1) of the Act. As such, in the given facts and circumstances no disallowance of impugned expenditure is warranted. Thus, we reverse the order of lower authorities and direct the AO to delete the addition. We order accordingly. Hence, this ground of assessee is allowed.

8. Next issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the addition of club membership fees paid by assessee of ₹52,555/-.

9. The assessee in the year under consideration has incurred club membership expenses and other related expenses as detailed under:-

Sr.No	Paid to	Amount (Rs)	Remarks/nature of expenses
1	Indian Chamber of Commerce (ICC)	3,00,000	Annual Corporate Membership fees
2	Federation of Indian Chamber of Commerce and Industry (FICCI)	60,000	Annual Corporate Membership fees
3	Taj Mahal Hotels	44,896	Annual Corporate Membership Fees
4	Calcutta Club Ltd.	7,022	Expenses incurred at club
5	The Calcutta Swimming Club Ltd.	637	Expenses incurred at club
	Total	4,12,555	

However, the AO observed that this club expenses have been incurred by the Director and Senior Executives of the assessee-company which are personal in nature. As such, there is no connection between the expenses incurred by the Director and Sr. Executives of the assessee-company with the business of assessee. Thus, AO disallowed the expenses of ₹4,12,555/- and added to the total income of assessee.

10. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Id. CIT-A submitted that the purpose for taking Corporate Membership of the club is to increase business relation through the Director and top Executives of the assessee-company. As such, various business meetings / seminars are held in the club premises with prospective buyers. Therefore, same expenses were incurred exclusively for the purpose of promotion of assessee's business. However, Ld. CIT(A) after considering the contention of assessee allowed relief in part to assessee by observing as under:-

"I have considered the submissions of the AR of the appellant. The expenses of Rs.3.60 lacs are relating to Indian Chamber of Commerce (ICC) and Federation of Indian Chamber of Commerce and Industry (FICCI) are to be considered for business purpose and balance expenses are being considered to personal nature. The AR has also not filed any evidence for business purpose of these balance expenses during the appellate proceedings.

Accordingly, AO is directed to delete the addition to the extent of Rs.3.60 lacs and balance amount of addition is confirmed. This ground of appeal is partly allowed."

Being aggrieved, by this order of Ld. CIT(A) assessee filed second appeal before us.

11. Ld. AR before us reiterated the same submissions that were made before Ld. CIT(A) and prayed before us to delete the same.

On the other hand, Ld. DR vehemently relied on the order of lower authorities.

12. We have heard the rival contentions and perused the material available on record. We find that in the instant case the AO disallowed the club expenses claimed by the assessee on the ground that these were not incurred for the purpose of the business. The view taken by the AO was partly confirmed by the Ld CIT(A). Now the issue before us arises for the adjudication so as to whether the club expenses incurred by the assessee are having any nexus with the business of the assessee in the aforesaid facts and circumstances. In this connection, we find that the clubs provided several kinds of facilities such as conferences, business meetings, as well as provision for multimedia exhibition. Many clubs allow membership to companies or other business entities. The membership is given in name of company or other concern. It is very well known that the clubs are a platform to meet people. The meetings can be privately organized or can be in the course of mass meetings or gatherings at the time of functions or celebrations at club. By visiting clubs, chances of making new contacts improve. With new contacts people can do more interactions which can be beneficial for business and profession. Therefore business organizations like company, firm, bank, co-operative society etc. functions through human agencies which may be directors or other officers of business organization. Therefore, business organizations provide facility to their officers to attend and avail services of clubs. Clubs make company or other business organization as its member.

This is generally called as corporate membership. The expenses may be in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc. The purpose of the expenditure is to have a suitable platform for meeting people and getting advantages of meeting many people at a time to maintain old contacts and also to make new contacts. The main purpose of the organization is to induce its officers to attend such places for maintaining and making contacts for the benefit of business. Even if some personal advantage is obtained by officers, it will be in nature of maintaining good relations with officers and in nature of staff welfare expenses. Therefore, the expenses are incurred wholly and exclusively for the purpose of business. By obtaining membership for a period of more than one year, there may be an advantage of enduring nature. However, such advantage is in the field of revenue benefit and not for obtaining any capital asset or obtaining benefit in capital field. Therefore such expenses will be of revenue nature.

In this regard we find support & guidance from the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Groz Beckert Asia Limited reported in 351 ITR 196 wherein it was held as under :

“The corporate membership was obtained for running the business with a view to produce profit. Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business. It is an expenditure incurred for the period of membership and is not long lasting. By subscribing to the membership of a club, no capital asset is created or comes into existence. By such membership, a privilege to use facilities of a club alone, are conferred on the assessee and that too for a limited period. Such expenses are for running the business with a view to produce the benefits to the assessee. Consequently, it cannot be treated as capital asset.”

We also find support & guidance from the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Samtel Color Limited reported in 326 ITR 425 wherein it was held as under :

“The expenditure incurred towards admission fee was towards corporate membership. The nature of the expenditure was one for the benefit of the assessee. The 'business purpose' basis adopted for eligibility of expenditure under section 37 was the correct approach. That was more so in view of the Tribunal's findings that it was the assessee which nominated the employees who would avail the benefit of corporate membership given to the assessee. [Para 5.1]

The other hurdle for qualification of the expenditure under section 37 is that expenditure incurred should not be on capital account. It is well-settled that an expenditure which gives enduring benefits is, by itself, not conclusive as regards the nature of the expenditure. Even a lump sum payment is not decisive as regards the nature of the payment. The true test for qualification of expenditure under section 37 is that it should be incurred wholly and exclusively for the purpose of business and the expenditure should not be towards capital account. In the instant case, the admission fee paid towards corporate membership was an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account as it only facilitated smooth and efficient running of the business enterprise and did not add to profit earning apparatus of the business enterprise. [Para 5.2]

Therefore, the Tribunal's order was to be upheld and the revenue's appeal was to be dismissed."

In view of above, we reverse the order of authorities below. Hence, this ground of appeal raised by the assessee is allowed.

13. In the result, assessee's appeal stands allowed.

Order pronounced in the open court 14/02/2018

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 14/02/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s MKJ Traded Ltd., Unit-1, 3rd Floor, Sagar Estate,2 Clive Ghat Street, Kolkata-001
2. प्रत्यर्थी/Respondent-DCIT, Circle-4(2), Aayakar Bhawan, 4th Floor, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।