

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

ITA No. 2555/Kol/2019
Assessment Year: 2012-13

United Mohan Bagan Football Team Pvt. Ltd.....Appellant
C/o. S.N. Ghosh & Associates, Advocates
2, Garstin Place
2nd Floor
Suite No. 203
Off Hare Street
Kolkata - 700 001
[PAN : AAACU 3153 H]

Vs.

Income Tax Officer, Ward-6(4), Kolkata.....Respondent

Appearances by:

Shri Somnath Ghosh, Advocate, appeared on behalf of the assessee.

Shri Dhrubajyoti Ray, JCIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : March 3rd, 2020

Date of pronouncing the order : March 4th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 7, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 27/11/2019, for the Assessment Year 2012-13.

2. The assessee is a private limited company mainly engaged in the activity of running a football team. It filed its return of income for the Assessment Year 2012-13 on 28/09/2012 declaring Nil Income. The Assessing Officer passed a best judgment assessment order u/s 144 of the Act, determining the total income at Rs.1,41,26,905/- *interalia* making an addition on account of difference in gross receipt of Rs.82,25,555/- and disallowance of expenditure on adhoc basis @ 5% of that which was claimed of Rs.54,15,232/-. Aggrieved the assessee carried the matter in appeal. The Id. First Appellate Authority, deleted the addition made on account of difference in gross receipts. On the issue of disallowance of 5% of expenditure claimed on adhoc basis, the Id. CIT(A) reduced the same to Rs.10,00,000/- lumpsum by observing as follows:-

"4.2. I have carefully considered the arguments of the AIR of the appellant and perused the relevant issue in the assessment order as well as the materials placed before me. The short point for my consideration is whether the ad hoc disallowance is justified in the circumstances. It is observed that the appellant has disputed the addition mainly on the footing that the AO did not consider the details of Other Expenses which was filed in his office on the 9th March, 2015. Under cover of such

letter, the appellant had given details of all the payments made to the professional football players after deduction of TOS. In fact, their name, addresses as well as PAN were also provided by the appellant. It was also contended that the payments on this account were made through banking channel. I have myself verified the assessment records. I find that the observations made in the assessment order that no supporting documents were not furnished by the appellant is not correct. However, I find that there were certain players whose PAN was not provided. It is also observed that the payments to certain professional players are humongous whereas it is not the same in respect of other players. There is huge disparity in such payments. Thus, I am of the considered opinion that the finding reached by the AO in resorting to the estimated disallowance by applying an ad hoc rate of @5% does not commensurate with the facts and figures, which in my considered opinion, should be restricted to a lump sum amount of Rs.10,00,000/- which appears to be justified considering the circumstances of the case. Accordingly, ground no. 4 raised in this respect is partly allowed."

3. The Id. Counsel for the assessee, Shri Somnath Ghosh, vehemently contended that there is no justification in disallowing an amount of Rs.10,00,000/- on lumpsum basis for the reason that he pointed out that the books of account of the assessee are audited u/s 44AB of the Act and that these were not doubted nor were disputed by the revenue authorities. He submitted that all the expenditure were duly supported by vouchers and all details and supporting documents were furnished before the Assessing Officer as well as the Id. CIT(A). He pointed out that the Id. CIT(A) has given a finding of fact that the Assessing Officer was not correct in stating that supporting documents were not furnished and that he failed to consider the details in question. He pointed out that the only reason for the Id. CIT(A) to disallow, on a lumpsum basis, Rs.10,00,000/- was that PAN Nos. of certain players were not provided and professional payments to certain players was higher than others. He relied on a number of case law for the proposition that such disallowance is bad in law. We would discuss these case-law if and when necessary.

4. The Id. D/R, Shri Dhrubajyoti Ray, relied on the order of the Id. CIT(A) and submitted that the assessee has not furnished PAN No. of certain players and hence the payments are not verifiable. He submitted that the payments to certain professional players are humungous and hence the Id. CIT(A) has reasonably, on an adhoc basis disallowed a lumpsum amount of Rs.10,00,000/-. He prayed that the same be upheld.

5. The Id. CIT(A) has acknowledged that the assessee has filed all details of the payments made to the professional football players after deducting TDS. Copy of these details are filed before us in the form of a paper book. From the details it can be seen

that PAN Nos. were provided in the case of every player except “Goutam Thakur” and “Daniell Carl Zeleny”, though TDS has been made from payments made to both these players and remitted to the Government. All payments are through banking channels and are evidenced by vouchers. It is common knowledge that payments to professional footballer players would differ from person to person depending upon their talent and capacity. The assessee in this case, has discharged the burden of proof that lay on it. In our view, the disallowance is without basis. Under the facts and circumstances, in our view, the adhoc disallowance of lumpsum amount of Rs.10,00,000/- is uncalled for. Hence, we delete the disallowance.

6. In the result, appeal of the assessee is allowed.

Kolkata, the 4th day of March, 2020.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated : 04.03.2020
{SC SPS}

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. **United Mohan Bagan Football Team Pvt. Ltd**
C/o. S.N. Ghosh & Associates, Advocates
2, Garstin Place
2nd Floor
Suite No. 203
Off Hare Street
Kolkata - 700 001

2. **Income Tax Officer, Ward-6(4), Kolkata**

3. **CIT(A)-**

4. **CIT- ,**

5. **CIT(DR), Kolkata Benches, Kolkata.**

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches