

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

I.T.A. NO.1033 OF 2017

BETWEEN:

M/S. SWAN SILK PRIVATE LIMITED
REP. BY ITS DIRECTOR
SRI. K.S. MANJUNATH
POST BOX 25210, "SWAN HOUSE"
#40, 4TH CROSS, RESIDENCY ROAD
BENGALURU-560025
PAN:AACCS4515R.

... APPELLANT

(BY SRI. S. ANNAMALAI, ADV.,)

AND:

THE ASSISTANT COMMISSIONER OF INCOME-TAX
CIRCLE-12(3), BMTC BUILDING
80 FEET ROAD, KORAMANGALA 6TH BLOCK
BENGALURU-560095.

... RESPONDENT

(BY SRI. K.V. ARAVIND, ADV.,)

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THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 31.07.2017 PASSED IN ITA NO.1861/BANG/2016 FOR THE ASSESSMENT YEAR 2010-11, PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AS STATED ABOVE AND THE ANSWER THE SAME IN FAVOUR OF THE APPELLANT.

(ii) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU BENCH 'B' BENGALURU IN ITA NO.1861/BANG/2016 DATED 31.07.2017 FOR THE ASSESSMENT YEAR 2010-11 (ANNEXURE-A) & ETC.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2010-11. The appeal was admitted by a bench of this Court on the following substantial questions of law:

"(1) Whether the Tribunal was justified in law in upholding the disallowance of credit card expenses of Rs.6,50,921/- incurred wholly and exclusively in earning the income and consequently passed a perverse order on the facts and circumstances of the case.

(2) Whether the Tribunal was justified in law in upholding the disallowance of Business Development Expenses of Rs.7,61,200/- incurred wholly and

exclusively in earning the income and consequently passed a perverse order on the facts and circumstances of the case.

(3) Whether the Tribunal was justified in law in upholding the disallowance of foreign travel expenses of Rs.37,18,705/- incurred wholly and exclusively in earning the income and consequently passed a perverse order on the facts and circumstances of the case.

(4) Whether the authorities below disallowed the Traveling expense to an extent of Rs.37,18,705/- on the ground that there was no necessity to incur such expenses which finding is contrary to the well settled principles that necessity is not essential for allowance under section 37 of the Act and consequently passed a perverse order on the facts and circumstances of the case.

(5) Whether the Tribunal was justified in law in remanding the issue of disallowance made under section 40(a)(ii) of the Act of

Rs.96,247/- being provision for Wealth tax paid which was already added back to in the return of income tax and consequently passed a perverse order on the facts and circumstances of the case.

2. Facts leading to filing of this appeal briefly stated are that assessee is a private limited company and is a 100% export oriented unit and is engaged in the business of manufacturing pure silk furnishings. The assessee filed return of income on 14.10.2010 for Assessment Year 2010-11 and declared a loss of Rs.1,03,30,047/-. The return was selected for scrutiny and notices were issued to the assessee. The assessee furnished the details sought for by the Assessing Officer. The Assessing Officer by an order dated 14.02.2013 determined the loss at Rs.50,61,956/- after making following additions:

(a) Disallowance of 50% of credit card expenses - Rs.6,50,921/-.

(b) Disallowance of business development expenses - Rs.7,61,200/-.

(c) Disallowance of 50% of foreign travel expenses - Rs.37.18,705/-.

(d) Disallowance under Section 40(a)(iia) of the Act- Rs.96,247/-.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 29.08.2016 dismissed the appeal. The assessee thereupon filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 24.07.2017 remitted the issues with regard to disallowance under Section 40(a)(iia) of the Act remitted the matter to the Assessing Officer, however, with regard to remaining issues the order of the Commissioner of Income Tax (Appeals) was upheld. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the assessee with regard to claim of the assessee for disallowance of credit card expenses submitted that the audited books of accounts of the assessee were not rejected by the Assessing Officer and therefore, adhoc disallowance could not have been made by the Assessing Officer. It is also pointed out that for the subsequent year claim with regard to disallowance of credit card expenses has been remitted to the Assessing Officer. With reference to business development expenses, it is urged that the assessee had adduced the documentary evidence before the tribunal which has not been taken note of. It is also submitted that the tribunal erred in holding the disallowance of claim of 50% of the foreign travel expenses. It is further submitted that for the subsequent year, the matter was remitted to the Assessing Officer with regard to disallowance of claim under Section 40(a)(iia) of the Act. It is submitted that in the computation of income, the provision for the tax for an amount of Rs.96,247/-

was already added by the assessee. Therefore, the question of adding back the same to the income of the assessee does not arise and therefore, the tribunal erred in remitting the matter to the Assessing Officer. In support of aforesaid submissions, reliance has been placed on decisions of Supreme Court in **'RAGHUBAR MANDAL HAIRHAR MANDAL VS. STATE OF BIHAR', AIR 1957 SC 810, 'PCIT VS. R.G.BUILDWELL ENGINEERS LTD.', (2018) 99 TAXMANN.COM 284 (SC)', 'S.A.BUILDERS LTD. VS. CIT', (2007) 288 ITR 1 (SC)** and decisions of this court in **M/S DELUXE ROADLINES PVT. LTD. VS. DCIT', ITA NO.213/2014 DATED 14.10.2014** and **'M/S KODAGU DISTRICT CO-OPEARTIVE BANK LTD. VS. ACIT', ITA NO.318 OF 2016 DATED 19.01.2021.**

5. On the other hand, learned counsel for the revenue submitted that auditor could not certify the expenses incurred by the assessee for the purposes of business and burden is on the assessee to prove the fact

that the assessee had incurred expenditure for business under Section 37(1) of the Act. It is further submitted that findings of fact have been recorded by all the authorities under the Act on meticulous appreciation of evidence on record which do not suffer from any infirmity warranting interference in this appeal.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. The Assessing Officer with regard to claim disallowance of 50% of credit card expenses has held that the assessee has not adduced any evidence that drawings made by the Directors through their personal credit card are in fact, incurred for the purpose of business of the company. Accordingly, the amount has been added back to the income of the assessee. The Commissioner of Income Tax (Appeals) as well as tribunal has further held that no evidence has been adduced by the assessee to show that expenses are incurred for purposes of business by assessee. It is

pertinent to note that before the tribunal the assessee had filed the documents with regard to the claims made by the assessee. The tribunal has rejected the aforesaid application on the ground that the documents annexed with the application are neither certified nor have been filed before the tribunal and the Assessing Officer. It has further been held that no application for admission of additional evidence along with documents was filed. Accordingly, it was held by the tribunal that no cognizance can be taken of the document along with the documents filed by the assessee. Thus, in the absence of any document on record, all the authorities have rightly disallowed the credit card expenses of Rs.6,50,921/-. Similarly, in the absence of any evidence on record, the disallowance of business development expenses to the extent of Rs.7,61,200/- and disallowance of foreign travel expenses of Rs.37,18,705/- has been upheld. The issue whether the assessee has added a sum of Rs.96,247/- as provision

for wealth tax in income is a question which has to be ascertained after remand and after giving an opportunity of being heard to the assessee. The findings of fact have been recorded by the Assessing Officer, Commissioner of Income Tax (Appeals) and the tribunal do not suffer from any infirmity. The aforesaid findings are also not demonstrated to be perverse. For the aforesaid reasons, the substantial question of law are answered against the assessee and in favour of the revenue.

In the result, we do not find any merit in the appeal, the same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**