IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री राजेन्द्र, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND SHRI RAJENDRA, ACCOUNTANT MEMBER

ITA NO.2687/Mum/2010
(Assessment year: 2006-07)

ITA NO.6081/Mum/2011
(Assessment year: 2007-08)

ITA NO.7440/Mum/2011
(Assessment year: 2008-09)

DCIT -2(3), R.No. 555 Aayakar Bhavan, Mumbai	Vs.	M/s Thomas Cook Insurance Services (India) Ltd. Thomas Cook Building, Dr. D.N. Road, Fort Mumbai – 400 001.
		PAN:-AABCT7079G
Appellant		Respondent

Revenue By/राजस्व की ओर से	Shri S. D. Srivastava
Assessee By/निर्धारिती की ओर से	Shri Ajay R. Singh

Date of hearing	05.06.2014
Date of pronouncement	11.06.2014

ORDER

Per Vijay Pal Rao, JM

These three appeals by the revenue are directed against the respective orders of CIT(A) for the A.Y. 2006-07, 2007-08 and 2008-09. Since common grounds are raised in these appeals and CIT(A) has also decided the issues of A.Y. 2006-07 and then followed the same in the subsequent years, therefore, for the sake of convenience these are clubbed and heard together and are being disposed off by this composite order. For A.Y. 2006-07 grounds raised by the revenue are as under:-

> 1.The order of the CIT(A) is opposed to law and facts of the case.
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> 2.On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting disallowance U/S 40(a)(ia) with regard to an amount of *Rs.40,50,335-* inspite of the finding in the assessment order that the above expenses represented business promotion expenses to which the TDS provisions were applicable.
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> 3.On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting addition of *Rs.15,64,013/-* though this amount represented commission which had already accrued to the assessee in the relevant assessment year.
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> 4.On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance of *Rs. 50* lacs which represented payments made by the assessee to Thomas Cook India Ltd., and in respect of which the assessee had not established that the expenses were incurred wholly and exclusively for business purposes.

2. Ground no. 1 is general in nature and does note require any specific finding.

3. Ground no. 2 is regarding disallowance made u/s 40(a)(ia) which was deleted by the CIT(A). The Assessing Officer noted that the assessee has not deducted tax in respect of advertisement and business promotion expenses to the tune of Rs. 40,50,335/- out of various expenses paid to the various parties. Accordingly the Assessing Officer disallowed a sum of Rs. 40,50,335/- u/s 40(a)(ia).

3.1 On appeal before CIT(A), the assessee has submitted that the Assessing Officer has made disallowance in respect of the expenses debited which were in the nature of rebate given to the customers, therefore, these debits did not represent any payment towards expenses and no TDS is required to be deducted at source. Further it was submitted that the amount debited under the head business promotion expenses was rebate only which was not covered u/s 40(a)(ia) and further the amounts debited in respect of each person's was less than 20,000/-, therefore, the provisions of chapter XVII-B for TDS were not applicable. It was submitted that certain disallowances were made by the Assessing Officer due to short deduction of tax. The assessee explained before CIT(A) that the payments were duly reflected in the e-TDS return and, therefore, the payment made to Vikash Travel and Virgin enterprises of Rs. 1,29,828/- was duly subjected to deduction of TDS as evident from the e-TDS return. The assessee further contended that the assessee has received exemption certificate u/s 197(1)(a) for certain companies, accordingly, no TDS was deducted in respect of the payments to Bulls & Bears and Tiwary Travels total amounting to Rs. 7,58,783/-. The assessee has also pleaded before the CIT(A) that certain expenses are in the nature of bad debts and have been wrongly debited in the accounts under the head business promotion which has been considered for disallowance by the Assessing Officer u/s 40(a)(ia). Thus the assessee submitted that a sum of Rs. 19,32,706/- was wrongly disallowed u/s 40(a)(ia) as the same was neither paid nor payable but pertains to bad debts. After considering the contentions and explanation of the assessee, the CIT(A) deleted the addition made by the Assessing Officer u/s 40(a)(ia).

3.2 Before us, the Ld. DR has submitted that certain new facts and pleas were raised by the assessee before CIT(A) regarding the bad debts amounts which was included under the head business promotion expenses and the CIT(A) accepted the same without proper examination of claim of the assessee by Assessing Officer.

3.3 On the other hand, the Ld. Authorized Representative of the assessee has reiterated the contention as raised before CIT(A) and submitted that the CIT(A) has decided this issue by considering all the relevant facts as well as record. Therefore, there is no error in the impugned order of CIT(A) in this respect.

3.4 Having considered the rival submissions as well as relevant material on record, we note that the CIT(A) has granted the relief to the assessee by considering the correct facts pointed out by the assessee in respect of the rebates allowed to the customers which was shown under the head business promotion expenses and, further, the correct amount of TDS deducted by the assessee as per the e-TDS return. Therefore, so far as relief granted by the CIT(A) by considering the correct facts which have already been produced by the assessee at the time of assessment, we do not find any reason to interfere with the finding of CIT(A) to that extent. We further note that the assessee raised a fresh plea before the CIT(A) that the expenses debited to the P&L account under the head business promotion expenses also includes a sum of Rs. 19,32,706/- towards the bad debts and, therefore, the said amount cannot be disallowed by applying the provisions of section 40(a)(ia). CIT(A) has accepted this explanation of the assessee without getting this fact verified from the Assessing Officer. Since the Assessing Officer was not given the opportunity to verify the correctness of the claim and further the claim of bad debts also requires to be examined. Therefore, in the interest of justice, we set aside this issue of bad debts amounting to Rs. 19,32,706/- being part of the business promotion expenses to the record of the Assessing Officer to verify and examine the same and then decide the issue as per law. Since the assessee has claimed bad debts first time before the CIT(A) and this claim of bad debts itself was not examined by the CIT(A), therefore, the Assessing Officer is directed to examine the claim of bad debts to the tune of Rs. 19,32,706/- after giving an opportunity to the assessee of being heard. **Hence this ground is partly allowed for statistical purpose.**

4. Ground no. 3 is regarding addition of Rs. 15,64,013/- representing the commission deleted by CIT(A) as pertaining to the subsequent assessment year.

4.1 The Assessing Officer has noted from the notes to the accounts that the assessee company has changed its policy of recognizing the revenue from commission on insurance policy sold, to ‘on the basis of effective commencement of policy. This means that earlier the revenue was recognized as and when an insurance policy was sold irrespective of its commencement. In the new methodology, the revenue from commission was recognized by the assessee only when there was effective commencement of policy. The Assessing Officer rejected the contention of the assessee that such new policy was in consonance with generally accepted methodology in the insurance sector and also in accordance to the accounting standard-IX for recognition of revenue which requires certainty. The Assessing Officer consequently rejected the claim of the assessee and made an addition of Rs. 15,64,013/- in this respect.

4.2 On appeal, the CIT(A) has deleted the addition by accepting the method of accounting followed by the assessee as mercantile system and the income has to be assessed on accrual basis. It was also noted by the CIT(A) that the assessee has been consistently following the revised system of accounting till now and there is no tax effect when the assessee has offered the said commission income in the subsequent years.

4.3 We have heard the Ld. DR as well as Ld. Authorized Representative and considered the relevant material on record. Since the commission income in question is in respect of the air travel insurance and the accrual of income depends on the actual journey undertaken by the passenger. If the passenger decides not to undertake the journey and the ticket is cancelled then the insurance also gets automatically cancelled. The commencement of the policy is dependent upon the commencement of the journey and once the ticket is cancelled then there is no question of commencement of the policy, therefore, the revised policy of accounting wherein the revenue of the commission on travel insurance is recognized by the assessee only when there is a commencement of the policy and not on mere sale of policy. Having regard to the nature of policy taken by the passenger for journey, it is clear that the accrual of the revenue depends upon the actual journey undertaken by the passenger, therefore, the accounting policy of recognizing the revenue only at the time of commencement of the policy is proper and justified. The CIT(A) has decided this issue by considering all these aspects and peculiar facts and, therefore, we do not find any error or illegality in the order of CIT(A) qua this issue.

5. Ground No. 4 is regarding disallowance of Rs. 50,00,000/- representing the payment made by the assessee to its group company Thomas Cook India Ltd. (TCIL) on account of reimbursement of expenses which was deleted by the CIT(A).

5.1 The Assessing Officer noted that the assessee has made reimbursement of expenses amounting to Rs. 3.37 crore to its parent company TCIL for the services it has given to the assessee and also paid on or behalf of the assessee. The Assessing Officer has made an adhoc disallowance of Rs. 50,00,000/- out of the total payment of Rs. 3.37 crore on the ground that it was not clear as to how much work was done by the employees of TCIL for TCIL itself and assessee. The Assessing Officer has observed that a part of the expenses reimbursed by the assessee might be subsidizing the parent company itself.

5.2 On appeal, the assessee explained before CIT(A) that the assessee is a 100% subsidiary of M/s TCIL which was making payment on behalf of the assessee and the assessee was reimbursing the same on the basis of actual bills and on allocation of common expenses as per their pre-determined ratio together with other subsidiary companies of TCIL. After considering the relevant record the CIT(A)has deleted the addition.

5.3 We have heard the Ld DR as well as Ld. Authorized Representative and considered the relevant material on record. The Ld. DR has submitted that the Assessing Officer has pointed out in the assessment order that the assessee has failed to establish the actual working done by the employees of TCIL for the assessee and it was also not clear how the assessee manages to bifurcate the expenses made on the services rendered, therefore, the disallowance made by the Assessing Officer is justified.

5.4 On the other hand, the Ld Authorized Representative of the assessee has submitted that the allocation of the expenses is as per the pre-determined ratio together with other subsidiary. The assessee produced the relevant record showing the allocation and ratio of the expenses as shared by the subsidiaries and parent company TCIL. Further the companies are sharing the common premises and, therefore, the expenses for maintaining the office are common and are shared as per the pre-determined ratio. He has further submitted that when the parent company is also paying the tax at the highest rate then there is no question of any tax effect on this arrangement of sharing expenses.

5.5. Having considered the rival submissions as well as relevant material on record, we note that it is not disputed that the parent company namely TCIL is having taxable lincome and subjected to the highest rate of tax, therefore, the sharing of the expenses is revenue neutral. The CIT(A) has decided this issue in para 9.4 as under:-

> *"I have considered the facts of the issue as well as written submissions filed by the AR and find merit in them. A perusal of the ' copy of the return of 'I'Cl L filed by the AR indicates that oth the TCIL. and the appellant company are having taxable income and are paying taxes at the same rate. Hence, there would be no logical reason for the appellant company to subsidize the parent company by 'reimbursing in excess of what was .due from them: An examination of the chart giving the basis/ratio on which . allocation of expenditure has been made between the group companies, it is noted that while some expenses, where specific identification was possible, were being allocated on actual basis. Some, expenses which were relatable to the area being used by different companies e.g. rent/ electricity / rates the taxes, general maintenance, house keeping and security were allocated on the basis of 'area' being occupied/used by each of these companies. It is further seen that certain expenses which were directly relatable to the employees for*

e.g. staff welfare, internet usage and resource input were being allocated on the basis of 'head count' of each company. Thus the basis of allocation of expenses is fair and. reasonable. The observation of the AO that it was not clear as to how the expenses on an employees of TCIL rendering services to the appellant were allocated to the appellant may not have much consequence firstly because, the allocation of expenses relating to resource input is on the basis of 'head count' and secondly because no useful tax planning purpose will be served for this group of companies since the appellant as well as the parent company are paying taxes at the same rate. Hence, the disallowance made by the AO is deleted and this ground of appeal is allowed."

5.6 It is clear that the CIT(A) has considered that the expenses are shared on the basis of 'head count' and further when all the companies are being taxed at the same rate then it does not effect the revenue. Having regard to the facts and circumstances of the case, we do not find any reason to interfere with the impugned order of CIT(A) qua this issue.

6. For the A.Y. 2007-08 the revenue has raised following grounds:-

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting disallowance of Rs. 20,00,000/- which represented payments made by the assessee to Thomas Cook India Ltd., and in respect of which the assessee had not established that the expenses were incurred wholly and exclusively for business purposes.

2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting addition of Rs. 7,17,112/- though this amount represent commission which had already accrued to the assessee in the relevant asst. year."*

3. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the Assessing Officer restore."

7. For the A.Y. 2007-08 the revenue has raised following grounds:-

> 4 "*On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 14,99,110/- though this amount represents commission which had accrued to the assessee in the relevant assessment year".*
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> *5 "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disallowance of Rs. 19,56,700/- which represented payments made by the assessee to Thomas Cook India Ltd. and in respect of which the assessee has not established that the expenses were incurred wholly and exclusively for the business purpose.*"

8. The grounds raised for the assessment years 2007-08 and 2008-09 are common and further these two grounds are common to the ground nos. 3 and 4 raised for A.Y. 2006-07. In view of our finding in respect of ground nos. 3 and 4 for the A.Y. 2006-07, the grounds raised for A.Y. 2007-08 and 2008-09 of the revenue's appeal are dismissed.

9. In the result appeal of the revenue for A.Y. 2006-07 is partly allowed for statistical purposes and appeals of revenue for A.Y. 2007-08 and 2008-09 are dismissed.

Order pronounced in the open court today i.e 11-06-2014

Sd/-	Sd/-
(Rajendra)	**(Vijay Pal Rao)**
(Accountant Member/लेखा सदस्य)	**(Judicial Member/न्यायिक सदस्य)**

Mumbai dated 11-06-2014
SKS Sr. P.S,