

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 7863/Mum/2019
(Assessment Year 2016-17)

Jamnadas Morarjee Corporate Office: No.300, 3 rd Floor, Gold Tower, No.50, Residency Road Banglore-560 025 PAN : AAACJ1355N (Appellant)	Vs.	ITO, Ward-3(2)(1) Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	Shri Inder Paul Bansal
Department by	Shri T.Sankar, Sr.AR
Date of Hearing	30.12.2021
Date of Pronouncement	08 .03.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-8 dated 03.09.2019 and pertains to assessment year 2016-17.

2. Grounds of appeal read as under:-

1. That under the fact and circumstance of the case, Ld. CIT(A) has erred in law as much as in fact in deleting the disallowance on salary and wages only to the extent of 50% of Rs.12,20,508/- and thus giving only partial relief of Rs. 6,10,254/-. While holding so he has failed to appreciate that expenses entirely were genuinely incurred wholly and exclusively for the purpose of business of the assessee and all the payments were also made through banking channels only. The assessee is a corporate entity and its accounts were duly audited and there are no qualifying remarks by Auditor who is a qualified Chartered Accountant

to doubt the genuineness of the expenditure. These expenditures are allowable in its entirety.

2. That under the facts and circumstance of the case Ld. CIT(A) has erred in law as much as in fact in upholding disallowance on contract expenses amounting to Rs. 3,25,800/-. While upholding such addition Ld. CIT(A) has failed to appreciate that the expenses were genuinely incurred wholly and exclusively for the purpose of business of the assessee and the applicable TDS was also deducted besides all payments were also made through banking channels only. The assessee is a corporate entity and its accounts are duly audited by qualified Chartered Accountant and there are no qualifying remarks by auditor to doubt the genuineness of expenditure. These expenditures are allowable in entirety.⁵

3. That under the facts and circumstances of the case Id.CIT(A) has erred in law and much as in fact in upholding the disallowance of amount of Rs. 1,50,000/- claimed on account of provision made on account of NPA. The addition is liable to be deleted as the expenses have been provided in compliance of guidelines issued by RBI for default of loan by borrower, therefore, the provision was made. The disallowance has wrongly been upheld by CIT(A).

3. Brief facts of the case are that assessee company is engaged in the business of Non-banking finance company. The AO observed that assessee company has earned interest as income forming part of business income amounting to Rs. 44,32,202/-. AO noted that assessee was asked to provide details of below mentioned expenses, which were not provided to the AO till date of AO's order. Hence, AO disallowed the said expenses by observing as under:-

Salary and Wages:

“In respect of Salary and Wages expenses of Rs. 12,20,508/-, the assessee was asked to provide employee wise qualification and amount of the expenses, It is noted that during the year under consideration, the assessee has just sanctioned one loan, and there is no other major business activities Further, in previous year there was no Salary expenses debited to Profit and Loss account. Such sudden increase in the salary expenses is not acceptable and in absence of any explanation received by the assessee, the said salary expenses of Rs.12,20,508/-is being disallowed.

(b) Contract Charges:

In respect of Contract expenses of Rs. 325,800/-, the assessee was asked to provide the documentary evidence of the same. On perusal of the Balance sheet, there does not appear any Contract which the assessee has entered, which the undersigned can verify. Thus, in absence of any explanation received by the assessee, the said contract expenses of Rs. 3,25,800/- is being disallowed.

(c) ROC Expenses:

The assessee has incurred ROC expenses of Rs.2,60,972/-, the assessee was asked to provide the nature of such expenses. It is seen that during the year the assessee has issued fresh share capital. Thus in absence of any explanation being received from the assessee, it is assumed that such ROC expenses is towards issue of such capital and thus capital in nature. In view of the above ROC expenses of Rs.2,60,972/- is being disallowed.

(d) Provision for NPA:

The assessee was asked to provide details towards provision for NPA of Rs.1,50,000/-, wherein the assessee replied that there is no NPA made during the year. However, from note 10 it is seen that the assessee has made provision of NPA of Rs.1,50,000/- the second effect of which might be appearing in profit and loss account. Thus the assessee was asked to explain the accounting treatment of such NPA of Rs.1,50,000/-. However, the assessee failed to explain such explanation, in view of which such NPA of Rs.1,50,000/- is being added to income.”

4. Against the above order, assessee appealed before the Id.CIT(A).
5. The Id.CIT(A) noted that assessee filed fresh evidences, it was remanded to the AO. Ld.CIT(A) obtained the remand report as well as rejoinder from the assessee. Ld.CIT(A) partly gave some relief and held as under:-

a) Salaries & wages of Rs 12,20,508/- : The appellant has submitted the documentary evidences such as ledger, bank account statement etc, and TDS have also been deducted in respect of the same. The appellant has incurred the employee benefit expense of Rs. 12,20,508/- which is such huge amount for a company which has no business during the entire year. There is only interest income and no business income during the year. Even though having consonance with the argument that some expenses are indeed required to keep the company afloat, I do not find the employee benefit expenses to the extent claimed as allowable, since spending on employees for no result contradicts the argument of the appellant itself since it does not justify the

necessity in such a dearth situation. Hence, 50% of the same are held to be unallowable.

b) Contract charges of Rs.3,25,800/- In response to the remand report, the appellant submitted that an amount of Rs.25,000/- per month and phone expenses were paid to Mr.Venkatraman for looking after all ROC work and for all statutory requirements. I find that total of Rs.50,000/- has been debited in P&L account earlier year, which has increased to Rs.3,25,000/- suddenly in the instant year. I do not find the explanation of the appellant to be acceptable since the statutory obligations are part and parcel which are for every year, and the abrupt rise in this year contract charges as compared to earlier year defies all logic. Further, no bills or invoice or any contract agreement have been submitted by the appellant to substantiate the claim. In view of the same, I do not find these expenses to be allowable.

c) Provision of NPA of Rs. 1,50,000/- - The appellant submitted that these are the provisions made by the CA as per RBI Guidelines for default of loan by the borrowers. The appellant did not explain or submit any details about any such specific guidelines of RBI in this regard. Further, the amount has been paid to Shri.Ravindra Nath Kamath, whereabouts of whom are not submitted by the appellant. In the view of the same, I do not find these expenses to be justified

In view of the same, the disallowance made by the AO in respect of ROC expenses of Rs. 2,60,972/- is hereby deleted. Salary & Wages expenses are allowed only up to 50%. Remaining disallowances are therefore confirmed. These grounds are partly allowed.

6. Against the above order, assessee is in appeal before the ITAT.

7. I have heard both the parties and perused the record. Ld. Counsel of the assessee made elaborate submissions that assessee has provided all the necessary details, which has not been properly appreciated by the authorities below. In the written submission, he submitted as under:-

Disallowance on Account of Salary and Wages of a sum of Rs. 6,10,218/-

“8.) While making disallowance under this head learned AO has observed that during the year under consideration the assessee has just sanctioned one loan and there is no other major business activity and also to the fact that in earlier year there was no salary expenses debited to profit and loss account and in this manner he has made the disallowance of expenses in their entirety. It has been admitted by the AO that assessee has filed its submissions from time to time which have been placed on record and are perused and verified which means that every detail was filed with the AO and he has made the disallowance only on the ground that last year there were no such expenses and there is sudden increase in salary expenses which is not acceptable. It may be mentioned that the list of persons to whom the salary has been

paid was filed along with their educational qualification and monthly salary and it is incorrect on the part of AO to observe that during the year assessee has sanctioned one loan only and there is no major business activity.

Salary and Wages Details for the Financial Year 2015-16

Sl No.	Particulars	Qualifications	Monthly (Rs.)	Total Amount (Rs.)
1	Purnima D.	LIB	18000	18000
2	Kuldeep E.S.	MBA Finance	50000	348387
3	Dhruv Dev Dubey	B.com	25000	68142
4	Nagaraj A.G.	B.com	22000	153290
5	Avaneesh Sheety	LIB	28000	91666
6	Kalpana Hedge	LLB	23578	70718
7	Sridhra Ramachandra	MBA-ICWA	50000	205000
8	Vankatesh G.K	MBA	27000	94066
9	Kokila. S	LLB	20000	63814
10	Bindu Rani	LLB	32000	89038
11	Deepak Kumar	B.Com	18387	18387
	Total		313965	1220508

9.) Details as submitted to the AO are also enclosed herewith copy of bank statement where these expenses have been debited and reference can be made to pg. 34-52 of the PB.

10.) It may be seen from the profit and loss account of the assessee that income earned by the assessee during the year under consideration fivefold as compared to earlier year and a major advance of Rs. 4,00,40,000/- was given to JDA project. It can be seen from note no. 9 of the audit report that earlier year the short-term loans and advances were only to the tune of Rs. 17,67,908/- as against short term loans and advances of Rs. 4,51,09,463/- during the year under consideration. Thus, there is a major increase in the short-term loans and advances and therefore, in earlier years the assessee did not need the assistance of the employees and in order to augment the

business the assessee had employed the employees which resulted in fructified proposition as the income of the assessee during the year has increased to five-fold. It may be noted here that the accounts of the assessee are audited by statutory auditor and no defect whatsoever has been found by the AO or CIT(A) in the maintenance of books of accounts and books of account of the assessee have been accepted after making detail examination of all details submitted to the AO and CIT(A) which are also subject to remand report. It is only after considering the details that the CIT(A) has sustained disallowance to the extent of 50%, which according to submissions of the appellant is contrary to law, as allowability of business expenditure has to be examined from the view point of the assessee (being business entity) and revenue authorities cannot step into the shoes of businessmen. Since other disallowances also relates to business expenditure only, the case law relating to business expenditure as being relied upon is discussed in the proceeding paragraphs and it is prayed that the same may be applied to all the disallowances sustained by CIT(A) and assailed in the grounds of appeal filed by the Appellant.

Disallowance of Contract Expenses- Rs. 3.25,800/-

11.) It is submitted that these expenses relates to payment made to Shri Venkata Raman for looking after statutory obligations of the assessee company with the office of Registrar of Companies and a sum of Rs. 25,000/- per month was fixed for monthly payment plus phone expenses. All the payments have been made through cheque and these payments are duly debited to the bank account of the assessee with Syndicate Bank. The details of which are given in the following table :

Contract Expenses Details A.Y. 2016-17

SI No.	Cheque No.	Amount	Amount Debited to our Current Account with Syndicate Bank, Shoolay Branch, Bangalore A/C No. 04461010013847
1	967410	25,800	10-04-2015
2	967411	25,675	08-05-2015
3	967417	23,080	06-07-2015

4	967425	26,675	13-07-2015
5	967426	25,620	21-08-2015
6	967433	25,605	11-09-2015
7	967447	25,687	27-10-2015
8	967457	25,356	06-11-2015
9	967467	25,337	10-12-2015
10	967486	25,344	11-01-2016
11	967498	25,520	10-02-2016
12	465640	25,341	10-03-2016
13	Payable	20,760	31-03-2016
	Total	3,25,800	

12.) Copy of Bank Account showing debit of these payments is being filed in the paper book from pages (53-59)

13.) All these submissions were made to CIT(A) also vide letter dated 30-08-2019 which has been reproduced in the order of CIT(A) at page 7. As submitted earlier, the case law being relied upon for first disallowance and which is discussed in the proceeding paragraph may be considered as applicable to this disallowance also.

Disallowance of Provision for NPA Rs. 1,50,000

14.) It is submitted that this provision of Rs. 1,50,000/- was made in respect of non-productive assets for a sum of Rs. 1,50,000/- which is as per guidelines of RBI. It has also been submitted in Para 2 of this written submission that the NPA is attributed to Shri Ravinder Nath Kamath which is 20% of the sum advanced to him and in the audit report it has been reported by the auditors that the certificate issued by RBI for the assessee to work as Non-Banking Financial Company continue to operate during the year under consideration also. The relevant portions of RBI guidelines permitting assessee to make such provision are attached in the paper book and reference can be made to pages (60-66) of the paper book. Therefore, it is submitted that disallowance has wrongly been sustained by learned CIT(A)."

8. Ld. Counsel of the assessee further placed reliance upon, several case laws as under:-

- i. Hon'ble Hyderabad ITAT in the case of Elem Investments Pvt. Ltd Vs ACIT
- ii. Hon'ble Apex Court in CIT v. Bharat Carbon & Ribbon Mfg. Co. Ltd.

9. He further submitted that it is not the case of the AO or CIT(A) that explanations are not genuine and books of accounts maintained by the assessee are defective. In this regard, he placed reliance upon Hon'ble Delhi High Court in the case of CIT vs DLF Hilton Hotels (2016) 69 taxmann.com 300. He further placed reliance upon decision of Hon'ble Delhi High Court in the case of National Industrial Corporation Ltd. vs CIT (2002) 258 ITR 575 and concluded as under:-

“In view of above submissions, it is respectfully prayed that above mentioned case lawfully supports the case of the assessee. No part of the disallowed expenditure, in the facts and circumstances of the case, can be said to be not incurred wholly and exclusively for the purpose of business of the assessee. Each of the expenditure mentioned above is duly accounted for in the books of accounts of the assessee which have been audited by competent Chartered Accountants and no violation of law for claiming these expenditures is described by the auditor. The accounts of the assessee have not been rejected by the AO. Disallowance made by the AO and sustained by CIT(A) is on the basis of Conjectures and surmises by making estimates etc. Payment of all the expenditures incurred by the assessee have been made through banking channel and all the details were furnished before the AO as well as CIT(A). Therefore, disallowances are prayed to be deleted in their entirety.”

10. Per contra ld. DR relied upon the orders of the authorities below.

11. Upon careful consideration, I note that the reason for the ld.CIT(A) in sustaining 50% disallowances out of salary and wages expenses is that the expenses are huge. He was of the opinion that spending on employees for no result is not justified. Hence, he has restricted the same to 50%. In this regard, I note that it is not the case that payments are bogus. It is also not the case that any detail was not supplied. Only

reason for the Id.CIT(A) to sustain 50% disallowance is that in his opinion expenditure is huge and for no result. I find that this is the wrong appreciation of fact. Assessee's interest income has increased manifold as compared to last year. Assessee is a NBFC and this is its operational income. Hence, the 50% disallowances on salary and wages is unjustified and it is directed to be deleted.

12. As regards, the contract charges, Id.CIT(A) has sustained it on the ground that as compared to Rs. 50,000/- debited last year, it has been increased to Rs. 3,25,000/- this year. It is not the case that payment is bogus or that the payment was not made for the purpose mentioned. Hence, Id.CIT(A) sitting in the shoes of businessman and deciding the justification or necessity of expenses is not sustainable and the same is directed to be deleted.

13. As regards, providing for NPA of Rs. 1,50,000/- is concerned. Ld.CIT(A) has noted that though assessee submitted that this was made by the CA as per RBI guidelines for default of loan by the borrower. However, Id.CIT(A) noted that assessee did not submit any details. Further he noted that amount has been paid to Shri Ravindra Nath Kamath, whereabouts of whom are not submitted by the assessee and hence, he held that this expense is unjustified. In this regard, assessee's counsel has submitted that the NPA is attributed to Shri Ravindra Nath Kamath, it is 20% of the sum advanced to him and in the audit report it has been reported by the auditors that the certificate issued by RBI for the assessee to work as NBFC continues. I note that Id.CIT(A) has noted that necessary details has not been submitted before him. The statement in audit report does not preclude the revenue from making the necessary verification. Hence, I remit this issue to the file of the AO to examine the issue afresh. The assessee is directed to give the necessary details in this regard. Merely, relying upon audit report does not suffice. Needless to add, assessee should be granted adequate opportunities of being heard.

14. In the result, this appeal by the assessee stands allowed for statistical purpose.

Pronounced in the open court on 08.03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 08 .03.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai