2017 (1) TMI 618 - ITAT DELHI

M/s Megasoft Solutioins (India) Pvt. Ltd. Versus DCIT, Circle 16 (2) , New Delhi

I.T.A. No. 2831/DEL/2016

Dated: - 03 January 2017

Rate of depreciation on CCTV cameras - Held that:- CCTV cameras cannot function without computer, as to see the footage captured by CCTV camera you need a device in the shape of computer and thus, Computer is an integral part of CCTV camera and as such, is eligible for depreciation at the rate of 60% as prescribed for Computers under the Income Tax Act and accordingly, allow the depreciation @ 60% on the issue in dispute. See Commissioner of Income Tax Versus Citicorp Maruti Finance Ltd. [2010 (11) TMI 802 - Delhi High Court]

Disallowance of advertisement expenses - Held that:- The said expenditure was genuine one as the same was paid to Lion Club for advertisement in District Directory for good and effective medium for company's products and services, as is evident from the receipt filed at pages 165 of the paper book and delete the addition in dispute by relying on the judgment of Hon'ble High Court of Delhi in the case of CIT vs. Salora International Limited reported in [2008 (8) TMI 138 - DELHI HIGH COURT] wherein it has been held that expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

Disallowance expenditure(i.e. 10% of the telephone expense and vehicle running and maintenance expenses and 40% of the festival expenses) - Held that:- The disallowance made by AO are without any basis and purely adhoc disallowances made for personal use or vouchers in the hands of the company which is not permissible in the eyes of law. Also note that the disallowance (40% of the festival expenses) has been incurred exclusively for the business purpose and all the payments had been through bank with proper supporting vouchers, hence, both the additions in dispute are deleted. See Sayaji Iron & Engg. & Co. vs CIT (2001 (7) TMI 70 - GUJARAT High Court).

Eligibility for deduction under section 80G - disallowing the donation - assessee had been made for the purpose of advertisement of the company - Held that:- As find that the expenditure of 20,000/- was paid for brand promotion and effective marketing of company's products and services, as is evident from the receipt filed at page 166 of the paper book. Hence, the addition in dispute is deleted. Also find that even otherwise the assessee is eligible for deduction under section 80G of the I.T. Act, 1961. See CIT vs. Salora International Limited [2008 (8) TMI 138 - DELHI HIGH COURT] wherein, it has been held that the expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

Judgment / Order

Shri H. S. Sidhu, Judicial Member

Assessee by : Sh. Salil Aggarwal, Adv. & Sh. RP Mall, Adv

Department by : S h . S.K. Jain, SR. DR

ORDER

This Appeal filed by the Assessee is directed against the Order dated 18.2.2016 passed by the Ld. Commissioner of Income Tax(Appeal-6), Delhi relevant for the assessment year 2012-13.

2. The grounds raised in the Appeal read as under:- That the impugned order dated 18.02.2016 received on 22.03.2016 is being challenged the following amongst other ground of which may be taken into consideration while adjudication the said appeal.

1. That the Learned CIT (A) has grossly erred both on facts and law in passing the impugned order without providing the sufficient opportunity of being heard to the assessee thus passing the order violating the principles of natural justice.

2. That the notice dated 31/12/2015 alleged to be served on the assessee, fixing the dated of hearing for 15/02/2016, was in fact never served upon the assessee.

3. That the Learned CIT (A) has grossly erred both on facts and law in the impugned order that none had appeared on 30/11/2015 whereas in fact it was informed by the office of the Learned CIT (A) about the non availability of the CIT (A) on 30/11/2015.

4. The assessee through its counsel had appeared for hearing on 09/09/2015 but it was informed by the office of the Learned CIT (A) that the previous present CIT (A) has got transferred and fresh notice will be sent for next date of hearing. The new CIT (A) has sent the fresh notice in the month of October 2015 fixing the date of hearing for 09/11/2015, which was duly attended to by the assessee.

5. Without prejudice to the above grounds, the learned CIT(A) has grossly erred in confirming the addition made by the Learned Assessing Officer who has ignored the facts and circumstances of the Appellant Company and grossly erred in allowing lower rate of depreciation on CCTV cameras of 93,431/- considering that CCTV cameras are part and parcel of office equipment (eligible for depreciation and not that of Computers (eligible for depreciation @ 60%). This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

6. That the learned CIT(A) has grossly erred in confirming Assessing Officer order who has ignored various judicial pronouncements in favour of the Appellant Company relied upon by it has provided no opportunity to assessee company to explain the same.

7. That the learned CIT(A) has grossly erred in confirming the addition made by the Learned Assessing Officer who has grossly erred in disallowing expenditure of 51,000 (advertisement expenses) without appreciating that the advertisement expenses have been incurred exclusively for the business development purposes. The Learned Assessing Officer has totally ignored the facts and circumstances of the Appellant Company in making the alleged addition of 51,000/- . This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

8. That the learned CIT(A) has grossly erred in confirming the addition made by the Learned Assessing Officer has grossly erred in adhoc disallowing expenditure of 1,24,003/- (i.e., 10% of the telephone expenses and vehicle running and maintenance expenses) considering them as personal expenses without any material evidence or basis. The Learned Assessing Officer has failed to recognize the fact that Assessee is an artificial judicial person having separate legal entity. Hence,

there can be no personal expense. Therefore, expenditure has been incurred exclusively for the business purpose. This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

9. That the Ld. CIT(A) has grossly erred in confirming the addition made by the AO who has grossly erred in disallowing the amount of 36,056/- (40% of the festival expenses) in spite of the fact that all the expenses have been incurred exclusively for the business purpose and all the payments had been made through bank with proper supporting vouchers. This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

10. That the learned CIT(A) has grossly erred in confirming the addition made by the Ld. Assessing Officer who has grossly erred in disallowing the donation of 20,000/- which had been made for the purpose of advertisement of the company. Hence, incurred exclusively for the business purpose. The Assessing officer has ignored the facts and circumstances of the Appellant Company. This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

11. That the learned CIT(A) has grossly erred in confirming that the Learned Assessing Officer has erred in not allowing the deduction under Section 80G. Without Prejudice, even if the same is considered as donation made by the company, the assessee is eligible for deduction under Section 80G of the Income Tax .Act, 1961. This fact has not been examined by the Ld. CIT(A) and has provided no opportunity to assessee company to explain the same.

12. That the Learned CIT(A) has grossly erred on not adjudicating that the Assessing Officer has grossly erred in initiating penalty u/s 271 (1) (c) of the Income Tax Act, 1961 for revising return of income by the assessee to withdraw the depreciation claimed on rented premises after receipt of scrutiny notice without appreciating the fact that no penalty can be imposed as return of income being revised by the assessee suo moto before any query/ questionnaire was raised in this regard by the Learned Assessing Officer.

13. That the learned CIT(A) has grossly erred in not adjudicating the levying of interest under section 234B, which in any case could not been charged.

14. That the learned CIT(A) has grossly erred in not adjudicating that learned Assessing Officer has grossly erred in initiating penalty proceedings under section 271 (1)(c) of the Income Tax Act. That the appellant seeks to alter, modify and add any of the ground as the case may be.

3. The brief facts of the case are that assessee filed the ereturn on 29.9.2012 declaring an income of 37,96,960/- which was revised on 27.9.2013 at an income of 45,80,280/-. The assesee company is engaged in the business of consultancy. The case was selected for scrutiny under CASS and statutory notice under section 143(2) of the I.T. Act, 1961 on 7.8.2013 and served upon to the assessee, fixing the case for 20.8.2013. A detailed questionnaire alongwith notices u/s. 142(1)/143(2) of the Act were issued on 9.12.2013 which were duly served upon the assessee. Due to change of address, fresh notices were issued on 10.10.2014 and also due to change of jurisdiction fresh notice u/s. 143(2) of the Act was issued on 17.11.2014. In response to these notices, A.R. of the assessee attended the assessment proceedings on various dates and the case was discussed. AO assessed the income of the assessee at 48,53,380/- u/s. 143(3) of the I.T. Act, 1961 vide his order dated 10.2.2015 by making various additions totaling 2,73,103/-.

4. Aggrieved with the aforesaid assessment order, assessee preferred appeal before the Ld. CIT(A), who vide impugned order dated 18.2.2016 has dismissed the appeal of the assessee by affirming the action of the AO.

5. Against the aforesaid order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

6. At the time of hearing, ld. Counsel of the assessee has not pressed the ground no. 1 to 4 hence, the ground no. 1 to 4 stand dismissed as not pressed.

6.1 With regard to ground no. 5 & 6 are concerned, these are relating to allowing the lower rate of depreciation on CCTV cameras of 93,431/- @ 15%. On this issue Ld. Counsel of the assessee has stated CCTV Camera can only run when it is connected with computer, as computer is an integral part of CCTV and thus, it cannot run on its own and as such, depreciation on the same should be at the rate of 60%, as has been envisaged for the computers and its peripherals under the Act.

6.1.1 On the other hand, Ld. DR relied upon the orders of authorities below on the issue in dispute.

6.1.2 I have both the parties and perused the records, I find force in the contention of the Ld. Counsel of the assessee that CCTV cameras cannot function without computer, as to see the footage captured by CCTV camera you need a device in the shape of computer and thus, Computer is an integral part of CCTV camera and as such, is eligible for depreciation at the rate of 60% as prescribed for Computers under the Income Tax Act and accordingly, allow the depreciation @ 60% on the issue in dispute. My view is fully supported by the following case laws:-

> *High Court of Delhi in the cases of CIT vs Citicorp Maruti Finance Ltd. (Delhi HC) in ITA No. 1712/2012 and CIT vs Bonanza Portfolio Ltd. reported in 202 Taxman 545.*

6.2 With regard to ground no. 7 relating to disallowing expenditure of 51,000/- advertisement expenses is concerned. In this regard, assessee counsel has submitted that that a bare perusal of page 165 of the paper book would make it evidently clear that, the said expenditure was paid to Lion Club for advertisement in District Directory for good and effective medium for company's products and services. He stated that it is a settled law that the expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

6.2.1 On the other hand, Ld. DR relied upon the orders of authorities below on the issue in dispute.

6.2.2 I have both the parties and perused the records, I find that the said expenditure was genuine one as the same was paid to Lion Club for advertisement in District Directory for good and effective medium for company's products and services, as is evident from the receipt filed at pages 165 of the paper book and delete the addition in dispute by relying on the judgment of Hon'ble High Court of Delhi in the case of CIT vs. Salora International Limited reported in 308 ITR 199 wherein it has been held that expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

6.3 With regard to ground no. 8 & 9 relating to adhoc disallowance expenditure of 1,24,003/- (i.e. 10% of the telephone expense and vehicle running and maintenance expenses) and disallowing the amount of 36,056/- (40% of the festival expenses) are concerned. In this regard, assessee counsel has submitted that the said disallowances made by learned AO are without any basis and purely adhoc disallowances made for personal use or vouchers in the hands of the company, especially when no specific defects have been pointed out by AO. With regard to disallowance of 36,056/-, assessee stated that these expenses have been incurred exclusively for the business purpose and all the payments had been made through bank with proper supporting vouchers.

6.3.1 On the other hand, Ld. DR relied upon the orders of authorities below on the issue in dispute.

6.3.2 I have both the parties and perused the records, I find that the disallowance of 1,24,003/- (10% of the telephone expenses and vehicle running and maintenance expenses) made by AO are without any basis and purely adhoc disallowances made for personal use or vouchers in the hands of the company which is not permissible in the eyes of law. I also note that the disallowance of 36,056/- (40% of the festival expenses) has been incurred exclusively for the business purpose and all the payments had been through bank with proper supporting vouchers, hence, both the additions in dispute are deleted. To support this contention, I draw support from the judgment of Hon'ble Gujarat High Court in the cases of Sayaji Iron & Engg. & Co. vs CIT (Gujarat HC) reported in 253 ITR 749.

6.4 With regard to ground no. 10 & 11 relating to disallowing the donation of 20,000/- and not allowing the deduction under section 80G are concerned. Ld. Counsel of the assessee stated that 20,000/- had been made for the purpose of advertisement of the company. Hence, incurred exclusively for the business purpose. He stated that a bare perusal of page 166 of the paper book would make it evidently clear that, the said expenditure was paid to for advertisement for promotion of company's products and services and stated that it is a settled law that that expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

6.4.1 On the other hand, Ld. DR relied upon the orders of authorities below on the issue in dispute.

6.4.2 I have both the parties and perused the records, I find that the expenditure of 20,000/- was paid for brand promotion and effective marketing of company's products and services, as is evident from the receipt filed at page 166 of the paper book. Hence, the addition in dispute is deleted. I also find that even otherwise the assessee is eligible for deduction under section 80G of the I.T. Act, 1961. My view is fully supported by the decision of the Hon'ble High Court of Delhi in the case of CIT vs. Salora International Limited reported in 308 ITR 199 wherein, it has been held that the expenses incurred for advertisement and sales promotion and brand building are allowable expenses.

7. In the result, the Appeal filed by the Assessee stands partly allowed.

Order pronounced in the Open Court on 03/1/2017.

Citations: in 2017 (1) TMI 618 - ITAT DELHI

1. CIT Versus M/s. Bonanza Portfolio Ltd. - 2011 (8) TMI 1058 - DELHI HIGH COURT
2. Commissioner of Income Tax Versus Citicorp Maruti Finance Ltd. - 2010 (11) TMI 802 - Delhi High Court
3. COMMISSIONER OF INCOME TAX Versus SALORA INTERNATIONAL LIMITED - 2008 (8) TMI 138 - DELHI HIGH COURT
4. Sayaji Iron And Engg. Co. Versus Commissioner of Income Tax. - 2001 (7) TMI 70 - GUJARAT High Court