

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH  
(Convened through Virtual Court)  
**BEFORE: HON'BLE MR. JUSTICE P.P. BHATT, PRESIDENT  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 426/Ahd/2018  
Assessment Year 2013-14**

Laxmi Sagar Trade Link Pvt. Ltd. 215, City Center Complex, Kalanala Road, Kalanala, Bhavnagar PAN: AABCL0532A (Appellant)	Vs	The ACIT, Circle-1, Jashonath Chowk, Nakubaug, Bhavnagar (Respondent)
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**Assessee by: Shri Tushar P. Hemani, A.R.**  
**Revenue by: Shri S.S. Shukla, Sr. D.R.**

Date of hearing : 30-12-2020  
Date of pronouncement : 31-12-2020

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A)-6, Ahmedabad dated 16-01-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The fact in brief is that return of income was filed on 30<sup>th</sup> July, 2013 and subsequently revised return of income was filed on 13 Feb, 2014 declaring total income of Rs. 2,77,98,355/-. The case was subject to scrutiny

assessment. The notice u/s. 143(2) of the Act was issued on 1<sup>st</sup> Sep, 2014. The assessee is engaged in the business of trading in non-ferrous metals during the year under consideration. The assessment u/s. 143(3) of the Act was finalized on 11<sup>th</sup> March, 2016 and total income was assessed at Rs. 2,89,38,360/-. The Id. counsel has contested two issues in grounds of appeal pertaining to disallowance of rent expenses of Rs. 8,80,000/- of premise taken on rent at Mumbai and disallowance of Rs. 10,000/- as unaccounted expenses towards freight on purchase of machine from Surendranagar. The relevant facts pertaining to the aforesaid issues are discussed as under while adjudicating the grounds of appeal.

**Ground No. 1 (Disallowance of rent expenses of Rs. 8,80,000/-)**

3. During the course assessment, the Assessing Officer noticed that assessee has incurred rent expenses @ Rs. 80,000/- per month totaling to Rs. 8,80,000/- as business expenses for premise taken on rent at Mumbai. On query, the assessee explained that due to expansion of the business operation of the company it had taken the premise on rent to carry out business and holding meetings with brokers/parties as staying in the hotel was costly and more expensive. The Assessing Officer has not agreed with the submission stating that assessee has not proved that such premise was used as guest house.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee reiterating the facts stated by the Assessing Officer that it had not been established that the premise used for business purpose.

5. During the course of appellate proceedings before us, the ld. counsel submitted paper book comprising copies of annual account and copies of leave and license agreement and the other related submission made before the lower authorities. The ld. counsel contended that the property in question was taken on rent by assessee company in order to use it as guest house whenever its directors go for company related works to Mumbai. The ld. counsel has also referred the various pages of leave and license agreement and particularly referred page no. 41 of the paper book pertained to nature of license on leave and license basis taken by the assessee company for the purpose of using by the directors of the company. The ld. counsel also submitted that frequent stay of directors of the assessee company in a hotel was found to be a costly option hence assessee took a residential premises on rental basis in Mumbai for its directors out of commercial expediency. The ld. counsel has also placed reliance on the decision of Jurisdictional High Court of Gujarat in the case of Sayajit Iron & Engg. Co. vs. CIT-253 ITR 749 (Guj). The ld. counsel also submitted that the similar rent expenses incurred by the assessee in subsequent year i.e. assessment year 2014-15 and 2015-16 were duly allowed by the Assessing Officer while framing scrutiny assessment u/s. 143(3) of the Act. On the other hand, ld. Departmental Representative supported the order of lower authorities reiterating that assessee has not established that the rental premise has been used for business purpose.

6. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer noticed that the assessee had claimed rent expenses of Rs. 8,80,000/- as business expenses in reference to

a flat rented at Mumbai. The assessee explained that it was in the process of expanding its operation therefore for the purposes of holding meeting with the brokers and parties it had taken the apartment on rent to save high cost of staying in the hotel. However, the Assessing Officer was of the view that assessee had not incurred the rent expenses for the purpose of business therefore he disallowed the sum of Rs. 8,80,000/-. The assessee has submitted before the Assessing Officer that the rented apartment has been used for the stay of company's directors for the purpose of business of the assessee. The assessee had submitted copy of rent agreement to the Assessing Officer and categorically explained that the said premise was used by the directors to hold business related meetings and used for commercial purposes as well as for temporary residential purposes of the directors. We have gone through the copy of leave and license agreement dated 20<sup>th</sup> April, 2012 placed in the paper book and observe that it is categorically mentioned that nature of leave and license was for the purpose of using for all the directors of the company and it was not taken for personal living purpose of any particular director. It is also observed that after deletion of section 37(3) w.e.f. 01-04-1998 guest house expenses are allowable under the act. Looking to the revenue from operation of the assessee company to the amount of Rs. 1,33,38,36,680/- for assessment year 2012-13, the impugned expenses of Rs. 8,80,000/- was only 0.05% of the total revenue from operation and there was increased in the revenue from operation from Rs. 1,33,38,36,680/- for assessment year 2012-13 to Rs. 1,76,28,64,861/- for assessment year 2013-14 which demonstrate expansion in the business operation of the assessee company. It is also undisputed fact that similar rent expenses were incurred by the assessee in respect of same property in

subsequent year 2014-15 and 2015-16 and the Assessing Officer had allowed the same while framing scrutiny assessment year u/s. 143(3) of the Act. In the light of the above facts and circumstances, we consider that the action of Assessing Officer in disallowing the rent expenses in the year under consideration is not justified, therefore, the impugned addition is deleted and this ground of appeal of the assessee is allowed.

**Ground No. (Disallowance of Rs. 10,000/- u/s. 69C of the Act)**

7. During the course of assessment, the Assessing Officer noticed that assessee has purchased cutting machine from Mistry Laxman Kadva Machines Pvt. Ltd., Sundranagar on 23<sup>rd</sup> May, 2012 but no freight has been accounted. On query, the assessee explained that it had obtained the delivery of the said machine in its own tempo, therefore, no separate expenditure towards freight was accounted. However, Assessing Officer has not agreed with the submission of the assessee and disallowed a sum of Rs. 10,000/- towards freight charges as unexplained expenses on the transportation of the purchased machine from Surendranagar.

8. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

9. During the course of appellate proceedings before us, the Id. counsel contended that Assessing Officer has made lump sum disallowance of Rs. 10,000/- on presumption basis without considering the fact that assessee has used its own tempo for the purpose of transportation of the purchased

machinery. On the other hand, the Id. Departmental Representative has supported the order of lower authorities.

10. Heard both the sides and perused the material on record. During the course of assessment , the Assessing Officer noticed that the assessee had purchased machinery for Rs. 2,69,387/- from from Mistry Laxman Kadva Machines Pvt. Ltd., Sundranagar and no freight for transportation of the said machinery had been accounted for by the assessee. The Assessing Officer had not accepted the submission of the assessee that it had used its own tempo to get the delivery of the purchased machinery. After perusal of the material on record, it is observed that lower authorities had failed to contradict the claim of the assessee that it had sent its own tempo for taking delivery of the machine in question and it was categorically mentioned in the invoice placed at page no. 33 of the paper book that the machine was dispatched through special tempo on 23<sup>rd</sup> May, 2012 and there was no evidence of using any hired tempo by the assessee. It is observed that Assessing Officer has not brought any evidence before invoking section 69C of the act that assessee has incurred any unexplained expenditure. The Id. counsel has also placed reliance on the decision of the Co-ordinate Bench Ahmedabad in the case of M/s Annapurna Ispat Vs. ACIT vide ITA No. 188/Ahd/2014 dated 23-01-2017 wherein it is held that the pre-requisite for invoking section 69C is that the assessee must have incurred some expenditure source of which is not explained or the explanation so furnished is not found to be satisfactory. In the light of the above facts and circumstances and finding, we consider that revenue authorities have not brought any evidence on record to show that the assessee has actually

incurred any expenditure and the entire addition has been made on presumption basis. We consider that such addition on presumption basis is not justified, therefore, we direct the Assessing Officer to delete the impugned addition. Accordingly, this ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 31-12-2020

**Sd/-**  
**(JUSTICE P.P. BHATT)**  
**PRESIDENT**

**Ahmedabad : Dated 31/12/2020**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue(
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद