IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]

I.T.A. No. 2278/Kol/2019
Assessment Year: 2015-16

Avinash Shaw**...*Appellant***
16A, Blochmann Street,
Kolkata – 700 013.
[PAN: BXIPS 7733 L]

Vs

ITO, Ward – 31(1), Kolkata**...*Respondent***
Kolkata.

Appearances by:
Shri Sujit Sekhareswar Roy, Advocate appearing on behalf of the Assessee.
Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 16, 2020
Date of pronouncing the order : February 28, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 9, Kolkata dated 18.06.2019 whereby he confirmed the disallowance of following expenses made by the AO:

i.	Driver's salary	Rs. 48,000/-
ii.	Fuel and lubricant expense	Rs. 1,50,265/-
iii.	Business conference expense	Rs. 1,50,000/-
iv.	Flight Booking expenses	Rs. 2,13,928/-
	Total	Rs. 5,62,193/-

2. The assessee in the present case is an individual who is carrying on the business of commission agent. The return of income for the year under consideration was filed by him on 28.03.2016 declaring a total income of Rs. 8,10,830/-. In the assessment completed u/s 143(3) vide an order dated 21.12.2017, the total income of the assessee was determined by the AO at Rs. 13,73,023/- after making the disallowance on account of the following expenses:

"3.1. Driver's Salary: In the profit and loss a/c the assessee had debited an amount of Rs. 48,000/- under the head of Driver's salary. Since there was no car in profession of the assessee hence the assessee was given the opportunity to offer his explanation in this regard and show-caused as to why Rs. 48,000/- would not be disallowed and added back to your total income. In absence of any explanation in this regard an amount of Rs. 48,000/- is added back to the total income of the assessee.

3.2. Fuel and Lubricant Expense: In the profit & loss A/c the assessee had debited an amount of Rs. 1,50,265/- under the head Fuel and Lubricant Expense. Since there was no car in possession of the assessee hence the assessee was given the opportunity to offer his explanation in this regard and show-caused as to why Rs. 1,50,265/- would not be disallowed and added back to your total income. The assessee offered no explanation and in absence of any explanation in this regard an amount of Rs. 1,50,265/- is added back to the total income of the assessee.

3.3. Business Conference Expense: In the profit & loss a/c the assessee had debited an amount of Rs. 3,00,000/- under the head Business Conference Expense. During the scrutiny proceedings no bills and vouchers produced by the assessee in support of his claim. Since business conference is necessary in the field of direct selling business and the assessee was unable to produce any evidence like bills and vouchers. Hence 50% of the said expenditure i.e. Rs. 1,50,000/- is disallowed and added back to the total income of the assessee.

3.4(i) Flight Booking Expenses: Along with the submission dated 13.12.2017, the details of flight booking expenses were submitted by the assessee. The details of the expenses are as below:

Sl. No.	*Passerger's Name*	*Date of journey*	*Amount (Rs.)*
1	*Avinash Shaw*	*21.06.2014*	*1,100/-*
2	*Avinash Shaw & Pankaj Shaw*	*06.05.2014*	*51,088/-*
3	*Avinash Shaw*	*17.04.2014*	*13,513/-*
4	*Muntazir Nazar & Sifat Naaz*	*05.05.2014*	*73,584/-*
5	*Aparupa Adhikary & Others*	*26.12.2014*	*21,158/-*
6	*Arindam Chakravarty*	*26.12.2014*	*21,158/-*
7	*Sunita Bhattacharya*	*26.12.2014*	*21,158/-*
	Total		*202,759/-*

As discussed in Para No. 3 the deduction like flight expenses, conference expenses etc. would be allowed for the accounts of teammates separately *and the deduction would not be allowed in the account of the assessee. Accordingly, the amount of Rs. 1,37,058/- (sum of sl. No. 4 to sl. No. 7) is not treated the expenditure of the assessee, hence disallowed and added back to the total income of the assessee.*

3.4(ii) Further it was also observed from the profit & loss a/c, the expenditure occurred under the head flight expenses was Rs. 5,10,238/-. However, the assessee provided the details of Rs. 202,759/- and was unable to produce details of amount of Rs. 3,07,479/-. Since travelling within country and outside the country is necessary in the filed of direct selling business and the assessee was unable to produce any evidence of Rs. 3,07,479/- like bills and vouchers. Hence 25% of the said expenditure i.e. Rs. 76,870/- (25% of Rs. 3,07,479) is disallowed and added back to the total income of the assessee."

3. The disallowance made by the AO on account of various expenses was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since the submission made on behalf of the assessee in support of his case was not found satisfactory by him, the Ld. CIT(A) confirmed all the disallowances made by the AO and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the disallowance on account of driver's salary and fuel and lubricant expense was made by the AO on the ground that there was no car owned by the assessee and no satisfactory explanation in this regard was offered by the assessee to justify his claim that driver's salary and fuel and lubricant expenses. Even at the time of hearing before the Tribunal nothing has been brought on record by the ld. counsel for the assessee to establish that these expenses were wholly and

exclusively incurred for the purpose of his business. Keeping in view the same as well as for the specific reasons given by the AO, I am of the view that the disallowance made by the AO on account of driver's salary and fuel and lubricant expense was fully justified and the Ld. CIT(A) has rightly confirmed by the same.

5. As regards the business conference expense of Rs. 3,00,000/- claimed by the assessee, it is observed that organising the business conference was accepted by the AO as incidental to the business of the assessee in the field of direct selling. However keeping in view the failure of the assessee to produce the relevant documentary evidence in the form of bills and vouchers to support and substantiate the same, he disallowed the claim of the assessee for business conference expense to the extent of 50%. Keeping in view all the facts and circumstances of the case as well as the nature of assessee's business, I find merit in the contention of the learned counsel for the assessee that the disallowance of 50% made by the AO is on the higher side and it would be fair and reasonable to restrict the same to 20%.

6. As regards the flight booking expenses, the learned counsel for the assessee has submitted that the said expenses as stated at serial no 4 to 7 in the details given in assessment order were in respect of the employee's of the assessee and since the same were incurred wholly and exclusively for the purpose of the assessee's business, the disallowance made by the AO to that extent is not sustainable, I find merit in this contention of the learned counsel for the assessee. Keeping in view all the facts and circumstances of the case including

especially the nature of assessee's business, I am of the view that the flight booking expenses are necessary for the purpose of the assessee's business and since the relevant amount of Rs. 1,37,058/- was incurred by the assessee on the travelling of his employees, there is no justifiable reason to disallow the same. I accordingly direct the deletion of disallowance made on account of flight booking expenses to the extent of Rs. 1,37,058/-.

7. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 28th February, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 28/02/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Avinash Shaw, 16A Blochmann Street, Kolkata – 700 013.
2. ITO, Ward – 31(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata