

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: Bench 'C', NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 4622/Del/2016
AY: 2012-13**

DCIT Circle- 10(2) New Delhi	Vs.	Grintex India Ltd. 7 th Floor, Left Wing, JMD Pacific Square, Sector- 15, Part- II Gurgaon, PIN- 122001
		PAN No: AAACG3456F
APPELLANT		RESPONDENT

Revenue by : Shri Amit Katoch, Sr. DR
Assessee by : Shri Ved Jain, Adv.
Shri Ashish Goyal, C.A.

Date of Hearing : 28/05/2019
Date of Pronouncement : 10/06/2019

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Revenue against the order dated 08/06/2016 passed by CIT(A)-4, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

"1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,71,846/- made on account of business promotion expenses, ignoring the fact that the assessee's company does not substantiate the same wholly and exclusively for the purpose of the company.

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1.17,939/- made u/s 40A(3) ignoring the fact that the payments are made in cash in excess of Rs. 20,000/.

3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred

in deleting the addition of Rs.11,03,000/- made on account of legal and professional charges ignoring the fact that separate auditing fees has been paid by the assessee company.

4. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.16,00,000/- made on account of legal and professional charges ignoring the fact that there is no written agreement with the sister concern from whom the company takes services.

5. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 13,41,982/- made on account of office expenses ignoring the fact that the same are not used wholly and exclusively for the purpose of the company.

6. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 38,91,474/- made on account of travelling and conveyance expenses ignoring the fact that the same is used by the director for his personal purposes.

7. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,07,102/ made on account of repair and maintenance expenses ignoring the fact that the same were not used by the assessee company for its business activity.

8. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”

3. During the relevant Assessment Year under consideration, the assessee company was engaged in the business of contract and consultancy. Assessee filed return of Income/loss declaring an income of Rs. 1,32,49,680/- on 25.09.2012. The case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act, 1961 was issued on 23.09.2013. Again notice u/s 142(1) along with questionnaire was issued on 24.11.2014. In response to notices, C.A./Authorized Representatives appeared from time to time and filed the requisite details as well as books of accounts which were taken on record and checked by the Assessing Officer. The Assessing Officer vide order dated 31.03.2015 made various additions/disallowances and assessed total income at Rs. 8,44,66,430/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to Ground No. 1 relating to addition of Rs. 37,71,846/- made on account of business promotion expenses, the Ld. DR submitted that the CIT(A) ignored the fact that the assessee company does not substantiate the said expenses was incurred wholly and exclusively for the purpose of the company. The Ld. DR further relied upon the Assessment Order. As regards Ground No. 2 relating to addition of Rs. 1,17,939/- made u/s 40A(3), the Ld. DR submitted that the CIT(A) erred in deleting the same by ignoring the fact that the payments are made in cash in excess of Rs. 20,000/-. As regards to Ground No. 3 relating to addition of Rs. 11,03,000/- made on account of legal and professional charges, the Ld. DR submitted that separate auditing fees was paid by the assessee company and therefore the Assessing Officer rightly made this addition. As regards to Ground No. 4 relating to addition of Rs. 16,00,000/- made on account of legal and professional charges, the Ld. DR submitted that the CIT(A) erred in fact that there is no written agreement with the sister concern from whom the company takes services. As regards to Ground No. 5 relating to addition of Rs. 13,41,982/- made on account of office expenses, the Ld. DR submitted that the same are not used wholly and exclusively for the purpose of business of the company. As regards to Ground No. 6 relating to addition of Rs. 38,91,474/- made on account of travelling and conveyance expenses, the Ld. DR submitted that the CIT(A) ignored the fact that the same is used by the director for his personal purposes. As regards to Ground No. 7 relating to addition of Rs. 3,07,102/- made on account of repair and maintenance expenses, the Ld. DR submitted that the CIT(A) ignored the fact that the same were not used by the assessee company for its business activity.

6. The Ld. AR submitted that all these additions were made by the Assessing Officer on ad-hoc basis and CIT(A) has rightly deleted these additions.

7. We have heard both the parties and perused all the relevant material available on record. As regards to Ground No. 1, the CIT(A) held as under:

“13.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The appellant has claimed expenditure of Rs. 26,40,292/- under the head business promotion in support of which the appellant submitted the copy of bills and vouchers maintained. The AO in the assessment order found that most of the expenses under the head business promotion are utilized by the director of the company for its personal purposes. In view of the same, the AO disallowed the 70% of the above expenditure. In the written submissions the appellant has contended that business expediency of the expenditure cannot be questioned by the AO sitting in the chair of businessman. I have examined the details submitted by the appellant. It is seen that the expenses incurred by the appellant are mainly on account of hotel payments and gift purchased for distribution on festivals. It is observed that the AO in the assessment order has not been able to point out any specific defect in the documentary evidence in the form of bills and vouchers submitted by the appellant. Further the addition has been made on ad-hoc basis which is not sustainable under the provisions of the act.

In view of the same, the AO was not justified in treating the expenditure as personal in nature as he has not been able to bring any evidence on record which could prove his allegations. Further, I agree with the contention of the appellant that these expenses are required to be incurred to build strong relationship with the employees, vendors and clients of the appellant company. The submission of the appellant on this issue was also forwarded to the AO. The remand report of the AO is silent on this issue and submission made by the appellant in this regard. He has not controverted above facts. Since, these expenses have been incurred wholly of the purpose of the company; the same is an allowable expenditure under section 37(1) of the act. The AO is directed to delete the ad-disallowance of Rs. 26,40,292/-.”

The Assessing Officer merely doubted nature of two expense vouchers incurred on account of purchase of diamond set and watches, aggregate of which comes to Rs. 8,82,684/-, came to a conclusion that the entire expenditure was not wholly incurred for business purposes. Thus the Assessing Officer made the disallowance of expenditure on ad-hoc basis. The concept of ad-hoc disallowance has been repeatedly deterred by the Hon'ble High Court and addition made on such basis is liable to be set aside. The Hon'ble Delhi High Court in case of CIT vs. Ms. Shehnaz Hussain 267 ITR 572 (Del) held that addition made on estimate and hypothetical grounds without any concrete

material or evidence cannot be sustained. Thus, the CIT(A) has rightly deleted this addition with the proper findings. There is no need to interfere with the same. Ground No. 1 of the Revenue's appeal is dismissed.

8. As regards to Ground No. 2, the CIT(A) held as under:

"14.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The AO held that the appellant had incurred the expenditure of Rs. 5,75,916/- in contravention of provisions of Section 40(3) of the Act and the same was disallowed accordingly. In this regard, contention of the appellant is that the amount reflected in the assessment order is the amount of expenditure against which various cash payments have been made and no single payment made is exceeding Rs. 20000/-. Further the payments made to Shri P Balakrishnan were on account of reimbursements made to various employees of the company and no single payment exceeds Rs.20,000/-. The submission of the appellant on this issue was also forwarded to the AO. The remand report of the AO is silent on this issue and submission made by the appellant in this regard. He has not controverted above facts.

I have examined the issue, the contention of the appellant is acceptable to the extent that the cash payments to Mr. P Balakrishnan were on account of reimbursements to various employees for various petty expenses incurred by them. As regards, the other expenses the appellant has not been able to substantiate its claim. The AO is directed to delete the disallowance to the extent of Rs. 1,17,939/-. This ground of appeal is partly allowed."

It is pertinent to mention that the amount booked by the assessee company is in the form of reimbursement and not the payment to the outside party in excess of Rs. 20000. From the records it can be seen that no single expenditure incurred by Mr. P. Bala Krishnan is in excess of Rs. 20000/-. All these facts were taken into consideration by the CIT(A) and has rightly given the findings by deleting the disallowance to the extent of Rs. 1,17,939/-. There is no need to interfere with the findings of the CIT(A). Ground No. 2 of the Revenue's appeal is dismissed.

9. As regards to Ground No. 3, the CIT(A) held as under:

“16.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The appellant has claimed expenditure of Rs. 11,03,000/- under the head legal and professional charges on account of services of project consultancy received from M/s AARMP & Co. During the assessment proceedings, the AO inquired about the payment made to M/s AARMP & Co. and observed that audit services are being given by M/s Satish S Agarwal and Co. for which separate expenditure has been claimed. Accordingly, he held that the appellant has not received any services from M/s AARMP & Co. and the above expenditure are bogus. In this regard, my attention is drawn to the reply dated 10/02/2015 whereby appellant has submitted a confirmation from M/s AARMP & Co. wherein it has been mentioned that the following compliance services have been rendered in the year under consideration for which the amount of Rs. 11,03,000/- has been charged:

- i. Labour Welfare fund*
- ii. Provident Fund*
- iii. ESIC a/c*
- iv. Value Added Tax*
- v. Service Tax*
- vi. Tax Deduction at Source*
- vii. Finalization of Accounts*

It has been mentioned in the confirmation that the amount of Rs. 11,03,000/- has been included in the income of the relevant financial year by M/s AARMP & Co. and payment for the same has been received through banking channel only. It has been noted that the tax at source has been deducted @10% under section 194J on account of professional services. The submission of the appellant on this issue was also forwarded to the AO. The remand report of the AO is silent on this issue and submission made by the appellant in this regard. He has not controverted above facts. Since, these expenses have been incurred wholly of the purpose of the company, the same is an allowable expenditure under section 37(1) of act. The AO is directed to delete the disallowance of Rs. 11,03,000/-.”

The assessee had duly furnished supporting evidences in the form of ledger, confirmation from other part, etc. Payments were made vide banking channel. TDS was duly deducted on the said payments. The said receipts were made part of its income by the other company. All these facts and evidences were not controverted by the Assessing Officer in the remand report. The assessee also clarified before the Revenue that the services received from such party were not on account of auditing

but on account of monthly accounting services and Annual Compliance Services to take care of statutory functions as mentioned in the order of the CIT(A). Thus, there is no need to interfere with the findings of the CIT(A). Ground No. 3 of the Revenue's appeal is dismissed.

10. As regards to Ground No. 4, the CIT(A) held as under:

"18.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The appellant claimed the expenses of Rs. 7,00,000/- & 9,00,000/- on account of services rendered by M/s Grintex Research Advanced Technologies Pvt. Ltd. and M/s ND Satcom Grintex Communication Ltd. AO doubted the expenditure and issued summons u/s 131 but no compliance was made by both of the parties. On the basis of the above, the AO made the disallowance of Rs. 16,00,000/- under section 40A(2)(a). In this regard, it is observed that the appellant has submitted confirmation from both the above mentioned parties respectively. Further, it is noticed that reply from M/s Grintex Research Advanced Technologies Pvt. Ltd. dated 26.03.2015 was received by the AO on 31/03/2015 i.e. after the completion of assessment proceedings. In the said reply the party has confirmed have rendered services to the appellant and raising the invoice of Rs. 7,00,000/- for the same. As regards, the professional charges paid to M/s ND Satcom Grintex Communication Ltd, the appellant has filed confirmation where in the amount professional fees of Rs.9,00,000/-has been confirmed by the party.

It has been noted that the tax at source has been deducted @10% under section 194J on account of professional services. The submission of the appellant on this issue was also forwarded to the AO. The remand report of the AO is silent on this issue and submission made by the appellant in this regard. He has not controverted above facts. The AO in the assessment order has disallowed the amount of Rs.16,00,000/- under section 40A(2)(a) but he has not been able to substantiate his allegation that how amount paid by the appellant was excessive or unreasonable. Simply because the two parties had sister concerns of the appellant company disallowance cannot be made under section 40A(2)(a). since, these expenses have been incurred wholly of the purpose of the company, the same is an allowable expenditure under section 37(1) of act. The AO is directed to delete the disallowance of Rs. 16,00,000/-."

At the time of assessment proceedings, the assessee filed detailed reply wherein detailed description of services performed by the said parties has been provided by the assessee. From the records it can be seen that M/s Grintex Research Advanced Technologies Pvt. Ltd. has provided services to the company for identifying foreign universities and Research institutions with whom the company could potentially

collaborate with regards to Research and Development for projects related to user applications development in the domain of defence, homeland security, aviation and space and augment its technology expertise to meet customer needs indigenously through local manufacturing. M/s ND Satcom Grintex Communication Ltd. has provided services to the company related to proposals which include satellite communication component for the projects the company proposes to take up with the Indian Navy, Air Force, Army DSA, ISRO and with system integrators such as BEL, ECIL, Tata, HCL, L&T etc. The parties have confirmed that the services were rendered and responded to notice u/s 131 of the Act. Therefore, the CIT(A) has rightly deleted this addition. There is no need to interfere with the findings of the CIT(A). Ground No. 4 of the Revenue's appeal is dismissed.

11. As regards to Ground No. 5, the CIT(A) held as under:

“19.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The appellant has claimed expenditure of Rs. 13,41,982/- under the head office expenses. The AO had found that certain expenditure are for personal purposes and not wholly and exclusively for the business purposes. On the basis of the above, the AO made 70% of the above expenses. It has been observed that the appellant has filed ledger a/c of office expenses. On perusal of the said ledger a/c it is noticed that the said expenses are various petty expenses including reimbursement to various employees incurred to meet the day to day need of the business. These expenses have been incurred in the regular course of business and do not involve any expenditure of personal nature.

The submission of the appellant on this issue was also forwarded to the AO. The remand report of the AO is silent on this issue and submission made by the appellant in this regard. He has not controverted above facts. Since, these expenses have been incurred wholly of the purpose of the company, the same is an allowable expenditure under section 37(1) of act. The AO is directed to delete the ad-hoc disallowance of Rs. 13,41,982/-.”

The Assessing Officer has not brought on record as to which expenses was disallowed while passing the Assessment Order. The Assessing Officer merely on the basis of conjectures and surmises made the ad-hoc additions without bringing any specific reasons to that effect. The CIT(A) has rightly deleted this addition and there is no need to interfere with the findings. Ground No. 4 of the Revenue's appeal is dismissed.

12. As regards to Ground No. 6, the CIT(A) held as under:

“24.3 I have gone through the assessment order, written submissions, paper book and remand report of the AO. The appellant had claimed the expenses of Rs. 51,88,632/- on account of travelling and conveyance. The AO found that most of the expenses had been incurred in the name of the director Sh. Hariharan Gautum. On the basis of the above, the AO made the disallowance of 75% of the above expenses. The contention of the appellant in this regard is that the disallowance is purely adhoc in nature and not tenable in law. It has been contended by the appellant that the expenses has been incurred on the travel of the employees of the company only for the purpose of its business. The payments made by Mr. Hari Hharan Gautam are not personal in nature. The same were on behalf of the company as he is the signing authority of the company.

The appellant has submitted copy of bills and vouche s maintained in respect of said expenses under Rule 46A as additional evidences. The same were admitted and sent to the AO for his verification and report. In the remand report the AO stated to have verified these documentary evidences. He has stated that the claim of the appellant seems to be genuine. Since, these expenses have been incurred wholly of the purposes of the company; the same is an allowable expenditure under section 37(1) of act. The AO is directed to delete the disallowance of Rs. 38,91,474/-.”

In the remand report itself, the Assessing Officer remarked that “I have examined the bills and vouchers of the assessee company which seems to be genuine.” Thus, the Assessing Officer has not disputed the genuineness of the evidences produced before the CIT(A). Therefore, after going through the evidences and Remand Report, the CIT(A) has arrived at a proper conclusion of deleting the said addition. There is no need to nterfere with the findings of the CIT(A). Ground No. 6 of the Revenue’s appeal is dismissed.

13. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 10th June, 2019.

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT
Dated: 10/06/2019

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	