

**30% ad-hoc disallowance of travelling expenses being car charges, foreign travelling expenses and domestic travelling expenses - assessee submitted that the expenses claimed by the assessee are bound to be more in the initial year of set up, as it involves extra travelling setting up of new business unit which does not correlate to transaction and business of the company**

ITAT DELHI, KURODA ELECTRIC INDIA PRIVATE LTD. VERSUS ACIT, CIRCLE -2 (1) , GURGAON.No.- ITA No. 3123/Del/2023

Dated.- March 8, 2024

The assessee Company is a Japanese Subsidiary Incorporated in India on 16/10/2015 which is mainly into trading of electrical materials, general electronic parts, semiconductors and electric and non-electronic auto components to/from Japan, India and internationally. It has been noticed by the A.O. that in the P & L Account of the assessee, the assessee booked car charges of Rs. 15,10,854/-, foreign traveling of Rs. 8,43,895/- and domestic traveling of Rs. 23,31,777/-. The assessee was asked to give ledger copies of the expenses with name, employee number, date of travelling, name and business purpose of traveling and sought for names and address of the person with whom meeting was proposed, copies of correspondence regarding fixing of meetings, minutes of meetings, consequent effect on sale and further dealing if any. The assessee through his Representative provided certain details, and clarifications but the Ld. A.O. not satisfied with the explanation given by the Assessee's Representative. However, the A.O. has not disallowed the entire expenditure claimed by the assessee, but made ad-hoc disallowance of 30% of the expenses claimed by the assessee, taking into consideration that it would not be proper to completely disallow the expenses.

11. It is not in dispute that the assessment was pertaining to first year of incorporation/business establishment of the assessee. It is the case of the

assessee that the expenses on car charges, foreign traveling and domestic traveling are bound to be more in the initial year of set up, as it involves much extra travelling in setting up a new business unit and does not correlate to transaction and business of the Company. The said fact has been not considered by the Lower Authorities. It is not the case of the Revenue that the assessee has not incurred any expenditure, on the contrary, the A.O. himself observed that 'it would not be proper to completely disallow the expenses' and made ad-hoc disallowance. The assessee on 29/11/2018 provided detailed submission on the questionnaire raised along with all the invoices, vouchers and other documentary evidence supporting the expenses incurred by the assessee. Further, on 04/12/2018 once again provided detailed submission with respect to all travel made by the employees along with the agenda of the meetings and other relevant details corroborating the business purposes of the travelling and car hire charges.

12. The Hon'ble Supreme Court in the case of CIT Vs. Delhi Safe Deposit Co. Ltd. (1982) 133 ITR 756 (SC) held that the true test of an expenditure laid out wholly and exclusively for the purposes of business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going. The expenditure incurred must be for commercial expediency. In the circumstances, the Ld. A.O. has been totally wrong in considering the fact that the discharge of the burden has to be effective and meaningful and not to cover up merely by book entries and paper work.

13. The Jurisdictional High court in the case of Dalmia Cement (254 ITR 377), held as under:-

“Under Section 37(1) of the Income tax Act, 1961, the jurisdiction of the Revenue is confined to deciding the reality of the business expenditure, viz., whether the amount claimed as a deduction was factually expended or laid out and whether it was wholly and exclusively for the purpose of the business. It must not, however, suffer from the vice of collusiveness or colorable device.

The reasonableness of the expenditure could be gone into only for the purpose of determining whether, in fact the amount was spent. Once it is established that there was a nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the armchair of the business man or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits.”

14. In the present case, at no point of time, the Lower Authorities have disputed the genuineness of the vouchers, payments, approvals, travel dates etc. but without their being any contrary evidence and without any material in hand erroneously made ad-hoc disallowance of Rs. 30% of the expenses claimed by the assessee. In our opinion, the Lower Authorities have committed error in making ad-hoc 30% disallowance of the expenses claimed by the assessee. Finding the merits in the Grounds of appeal of the Assessee, we allow the Grounds of Appeal of the Assessee and delete the disallowance made by the Lower Authorities.