

Hinduja Group India Ltd, Mumbai vs Acit Rg 6(3), Mumbai on 17 May, 2018

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.4458/Mum/2014
(Assessment Year :2009-10)
ITA No.2466/Mum/2014
(Assessment Year :2008 -09)

M/s. Hinduja Group India Ltd.,
Vs. ACIT - RG 6(3)
(Now known as Aasia Advisory Services Ltd.) Aayakar Bhavan
Hinduja House, Dr. A.B. Road M.K.Road
Worli, Mumbai - 400 018 Mumbai - 400 020
PAN/GIR No.AAACH2457B
Appellant .. Respondent

ITA No.575/Mum/2016
(Assessment Year :2010 -11)

ITO - 7(1)(3), Vs.
Mumbai M/s. Hinduja Group India Ltd.
Hinduja House, Dr. A.B.Road
Worli, Mumbai - 400 018
PAN/GIR No.AAACH2457B
Appellant .. Respondent

Assessee by Shri J.P.Bairgra /
Shri S.K.Mutsaddi
Revenue by Shri V.Vidhyadhar

Date of Hearing 27/02/2018
Date of Pronouncement 17/05/2018

/ O R D E R

PER R.C.SHARMA, A.M.

These are the appeals filed by assessee against the order of CIT(A)-12, Mumbai dated 30/05/2014 for A.Y. 2008-09 and A.Y. 2009- 10 in the matter of order passed under Section 143(3) of the Income Tax Act (hereinafter "the Act"). In the A.Y. 2010-11, Revenue is in appeal before us with respect to disallowance of similar expenses.

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2. Grievance of assessee and revenue in all the three years are common which pertains to disallowance made on account of management training expenses paid to MBA Graduates.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that assessee is engaged in the profession of rendering management consultancy services to the Hinduja Group. In the A.Y.2010-11, the assessee company e-filed its return of income on 29.09.2010, declaring a gross total income of ` NIL, however, it had declared income u/s.115-JB(l) at 16,19,200/-. The assessee had computed its business income at 56,29,324/- & income from other sources at 10,93,793/-, which it had set off against unabsorbed business loss & depreciation of AYs 2008-09 & 2009-10 respectively. During the course of assessment he AO has made the following disallowances.

Sr. No.	Particulars	Amount (`)
	Disallowance of remuneration paid to Management Graduates on the	
a	grounds that the expenditure is capital in nature	94,11,607
b	Foreign exchange for foreign travel	81,841
	Total	94,93,448

5. Similarly in assessment years 2008-09 and 2009-10 the

assessee's claim for management fee was disallowed by the AO. By the impugned order the CIT(A) confirmed the action of the AO in assessment years 2008-09 and 2009-10, however for A.Y. 2010-11 the CIT(A) allowed assessee's appeal. Against the order of the CIT(A) assessee is in appeal for A.Y. 2008-09 & 2009-10, whereas Revenue is in further appeal before us in A.Y. 2010-11.

6. From the record, we found that the assessee renders management consultancy services to the Hinduja Group. During the years under consideration, the assessee engaged the services of fresh management M/s. Hinduja Group India Ltd., graduates. The explanation as given by the assessee justifying the above expenditure as per letter dated 04.03.2013 is reproduced as under:-

During the assessment year 2010-11, Management trainee fees - Rs.94,11,607/- were paid to various IIM Graduates, by the assessee company. The details of the stipends/remuneration paid to these management trainees are enclosed as per Annexure ~ 31 (Page No.: 360). As you are aware, the assessee renders management consultancy services to the Hinduja Group. These management graduates were sent on deputation to various Hinduja group entities, who had reimbursed the salaries of these graduates. Wherever this was not possible, the services of these MBA graduates was utilised by the assessee company to service the in-house clients from whom fees were received. In AY 2008-09, the AO has treated this expenditure as not incurred for the purposes of business and disallowed the same in the assessment. The AO

discusses this proposition at para 5.3 to paragraph 5.4 of the assessment order (page 4 to 8 of the assessment order). While arriving at this conclusion, the AO has relied upon the decision of Ram Bahadur Thakur 261 ITR 390. The decision referred to by the AO is based upon the issue pertaining to disallowance u/s 40 A (2) of the income tax act. First of all it is clarified, that none of the parties to whom the amount has been paid are related to directors /promoters of the assessee company. In these circumstances the question of invoking the provisions of section 40 A(2) of the income tax act does not arise. The central board of direct taxes in its circular dt no 6 -P (LXXVI-66) of 1968 dt 06/07/1968 issued under section 40 A{2} has cautioned the field officers, that while resorting to this provision the AO is expected to exercise his judgement in a reasonable and fair manner which will meet should not cause hardship in bona/ide cases. The Central Board of Direct Taxes in its Circular No. 4/1950 dtd.19.06.1950, while considering an issue of travel expenditure has held that once it is established that the expenditure for traveling is revenue in nature and incurred wholly and exclusively in the interest of business, it should be allowed without being too meticulous, as to whether such visits results immediately in earning of profits. The Gujarat High Court in Voltamp Transformers P Ltd 129 ITR 105, has held, the benefit derived by or accruing to the assessee from goods services or facilities etc. are to be judged from the viewpoint of a businessman and not from the viewpoint of a revenue officer. This cardinal principle has not been accepted by the AO and while considering the allowability of the expenditure he has looked into the proposition in a micro manner rather than a macro manner. With reference to the proposition of allowability of this expenditure on the ground of business expediency, we draw your attention to our submission dtd.09.01.2013, on which we seek to rely.

M/s. Hinduja Group India Ltd., It may not be out of place to mention that the appeal for AY 2008-09 is still pending before CIT(A) on all the issues, which has been disallowed in the assessment.

7. However, AO did not convince with the assessee s reply and disallowed the remuneration paid to Management Graduates.

8. By the impugned order, CIT(A) deleted the same in A.Y. 2010-11 after observing as under:-

4.1 The first ground of appeal is in respect of the disallowances of Rs. 94,11,607/-. The Assessing Officer has discussed this issue in Para '3' of the assessment order. According to the Assessing Officer there was no material on record to establish how such management trainees fees is relatable to its business activities. As per the Assessing Officer there was no proof of any services rendered or revenue generated.

4.2 In the appellate proceeding it is submitted that the Management trainees fees Rs.94,11.607/- were paid to the various MM Graduates, by the appellate company. The appellant rendered management consultancy services to the Hinduja Group. The Management Graduates were sent on deputation to the various Hinduja Group

entities. The services of these MBA graduates were utilized by the Appellant Company to service the in-house clients from whom fees were received. The salary paid to the Management trainees was much lower than what would have been payable to Senior Professional qualified employees.

4.3 In the profit and loss account it is seen that the Appellant has claimed employee costs of Rs. 6.99 crores in the current year.

The salaries paid to Management Trainees of Rs.94.11 lacs are included under the head employees cost. The management trainees are like what article clerks are to a Chartered Accountancy Firm. From the details called it is seen that the Management Trainees have worked for the Appellant Company for a period of 1 to 2 years. The break-up of employee cost employee- wise was also furnished. It is seen that the payment to Management Trainees is much lower than salary paid to the regular employees. Salaries paid varies from trainee to trainee and generally is less than Rs.50.000 per month. Comparing the expenditure, it is seen that the consultancy income is to the tune of Rs.10.92 crores in the current year and the main cost incurred is the employee cost and administrative and another expenses. The employee cost in the current year at Rs. 7.94 crores is much lower than of Rs. 11.60 crores in the preceding year and the professional income was Rs.10.65 crores. In the following AYs 2011-12, the employee cost of Rs.7.03 cores is comparable to the current year M/s. Hinduja Group India Ltd., while consultancy income of Rs.12.83 crores is somewhat higher. The process of recruitment of management graduate was explained by the A.R. It was submitted that graduates were hired from Indian Institute of Management (IIM) - Ahmedabad, Bangalore, Kolkata and Lucknow, XLRI - Jamshedpur and ISB - Hyderabad. These are premier institutes and the Graduates are with Engineering background with work experience before the MBA Degree. Copies of the employment agreements entered into by the appellant with these 22 trainees was also submitted. As per these agreements, the Trainees were designated as Asst. Manager. The payments to the employees were in the nature of salaries on which appropriate taxes was deducted. Copies of Form 16 were submitted. The Appellant Company has entered into several service agreement contracts with its Group Companies such as Ashok Leyland. Gulf Oil Corporation, Hinduja Global Solutions, Induslnd International Holdings Ltd. and Hinduja Ventures Ltd. Copies of these agreements were also produced. Details of the remuneration paid to the 22 Management Trainees were submitted as also the details of the project handled by them, which is tabulated as under :-

Sr.No.	Name of the Management Graduate	Nature of work handled	Amount paid in Rs.
1	Abhikesh Dabash	Structure for product offering of Arthacom Portal (HGI) Implementing the Model Developed by Manvendra by initiating Mock Trading (AL)	2,54,301
2	Abhishek Dubey	Feasibility study of HTMT's BT0 to BTG transformation plan by expanding into consulting, its need and the strategic roadmap (HGS) Implementing Strategy for ICV Sales (AL)	1,85,905

3	Durga Patnaik	Development 85 Communication of Customer Value Proposition for the Commercial Vehicle Segment (HGS) Development & Communication of CVP for Commercial Vehicle Segment (Gulf)	11,14,287
4	Kholi Kayideni	Sourcing of Lubricant for AL-Nissan LCV: A study on Consumer Behavior, Techno Commercial evaluation of supplier & evolving global trends in lubricant usage (AL)	1,68,671
5	Mansij Majumdar	Campus Strategy with Presentation and selection procedure (HGI) HR/IR with Ashok Leyland - Develop HR architecture for GENMOD organization (AL)	2,14,468
6	Manvendra Pratap Singh	Hedging using Steel Futures (AL) Mergers & Acquisition - assessment of target opportunities and Due Diligence (HGS)	3,88,130

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7	Nitin Gregory	Evolving the roadmap for transformation of Strategic Sourcing function to best-in-class (AL) Developing Financial Models for the businesses (Gulf)	9,10,726
8	Pallavi Srivastava	Internal Communication for Fleet Business -Creating a Customer Value Proposition through the right communication strategy (Gulf) Work on the funding document for ECA/ECB, domestic borrowings, new business case for advancement of F23 vehicles (AL)	2,04,624
9	Peeush Garg	Business Planning and Strategy (Gulf) Business case for Harvester Combine (AL)	7,36,148
10	Prasanna Alagesan	Marketing, Exports, Business Process Reengineering, IT System Design & Implementation (AL) Corporate Finance (HGI)	1,90,176
11	Prashant Saklani	DTE-NA Post Acquisition Operations and Performance Review (AL) Business Planning, Strategy and Performance Review (Defiance)	2,20,268
12	Prateek Parikh	Return on Resources Deployed through ROA Calculation, Financial Statement Analysis, Cost Allocation, Revenue Allocation and Profitability Analysis (AL) Developing & initializing strategies to enhance sales in key channels (Gulf)	3,20,876

13	Praveen Rajurkar	Screening of Potential Targets - 10 companies analysed and ADES Delegation of Power (AL) Re- Engineering Of HFL Ennore - Project "Operation 6 Star" - Phase 1 (HF)	2,25,117
14	Rahul Raj Jain	Contribution Variance Analysis of inbound voice based process queue-wise (HGS) Cost efficacy and effectiveness (AL)	7,88,179
15	Rahul Sharma	Mergers & Acquisition and Corporate Strategy (HGS) International Operations - Process Improvement (AL)	1,91,939
16	Ralph Drago	Develop a Marketing Strategy to increase AL market share in the ICV segment (AL) Business Planning & Strategy - working on the strategy of HTMT globally i.e USD 500 mn revenue by 2010 (HGS)	2,34,578
17	Saurabh Kumar Jain	Project Sunrise - Role in Budgeting & MIS; Business Case for 3 JVs, Scenario Analysis; delegation of Power (AL)	1,98,068
18	Shilpa Bawane	The objectives for the assignments / projects worked on as a part of the Strategy team are as follows:	6,62,753

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Education Sector

- Competitor analysis - Educomp Solutions Ltd.
- Analysis of the Education Value Chain
- Analysis of Regulations and Licenses in the Education Sector
- Corporate Planning
- Modification to the consolidated Corporate Plans 2009-2011
- Financial Services
- Financial Services - Structure for product offerings for Arthacom Power Sector
- Power Sector Analysis and handover of the work to the new joinee
- Analysis of the Nuclear power market

19	Vamsi K Valluri	ICV Sales (AL) On Dot Implementation of a daily secondary sales tracking system through mobile phones (Gulf) Analysis of Diesel engine oil market and recommendation on the possible strategic routes for Gulf Oil for 2010-11 (Gulf)	9,67,427
20	Vikas Munjal	Business Case for 3 JVs; Revenue Model for Technology JV; Scenario Analysis	2,02,907

		for Base case; MIS (AL)	
		Infrastructure Opportunity	
		Assessment Group - working on the	
		sector investment fund (HGI)	
21	Vineet Vishwanathan	Launch Of New PCMO Products (Gulf) To 7,64,741	
		drive the implementation of the roadmap	
		for S3 (AL)	
22	Yashaswi	Marketing - Brand Architecture (AL) 2,67,318	
		Project on RFP and Sales process and	
		design of an automation tool for	
		these processes (HGS)	
	Total		94,11,607

4.4 Various case laws were cited for the proposition that the expenditure incurred has to be adjudged from the point of view of the businessman and not of the revenue. Following was submitted.

i) "It is settled proposition that an expenditure has to be adjudged from the point of view of businessman and not of the revenue. In this context, we draw your attention to the Apex court decision rendered in the case of Walchand & Co. Pvt.

Ltd. - 65 ITR 381. In CIT v. Indian Bank Ltd. - 56 ITR 77. the apex court held that there is no need to examine, whether the expenditure or allowance, which is permissible must be capable of producing taxable income.

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ii) The House of Lords in British Insulated & Helsby Cables Ltd. -

(1925) -tax cases 155, has held that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on the business. The above test in Atherton's case (supra) has been approved by this court in several decisions e.g. Eastern Investments Ltd. v. CIT (1951) 20 ITR 1 (SO, CIT v. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC)

iii) The apex court in Travancore Titanium Products Ltd. v. CIT -

60 ITR 277 has held that "but every item of expenditure merely because it is connected with the trade may not necessarily be treated as a permissible deduction. A fairly reliable approach for determining what may be regarded normally as expenditure laid out or expended wholly and exclusively for the purpose of the business has to be looked into. The nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial

expediency. It must be directly and intimately connected with the business and be laid out by the taxpayer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business i.e. between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

iv) The apex court in the case of CIT v. Malayalam Plantations Ltd. (1964) 53 ITR 140 (SO explaining the meaning of the word "for the purpose of business" has held that "the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits'. Its range is wide; it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery: it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a precondition to commerce or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business."

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v) Once again the Supreme court in S.A. Builders Ltd. - 288 ITR 1, has held that once the transaction has been entered in a commercially expedient manner, the resultant expenditure or loss is fully allowable to the assessee. "

4.5 It is noted that the assessing officer has not found any of these salary payments to be bogus. His main contention is that the expenses are huge and that the expenses are not shown to be incurred for appellant's business. As already seen in earlier, the total salary payments to these 22 management graduates at Rs 94 lakhs is only 11% of total salary expenses of Rs 794 lakhs incurred by the appellant. As regards the contention of the assessing officer that the expenses incurred are not for business, it is seen that the appellant has given details of the nature of assignments given to these MBA graduates. The appellant has income from professional consultancies. These MBA graduates are not independent consultants, rather they are management trainees, assisting other senior professionals of the appellant. Case laws cited by the appellant do support the proposition that how the businessman runs his business and incurs expenditure cannot be questioned. Here there is no positive proof that such expense are bogus or that these trainees were not carrying out the business of the appellant. Thus, the summary disallowance of the expenses is not justified. The disallowance of Rs 94,11,607/- on this count is deleted. Ground of appeal No.1 is allowed.

9. However, in the assessment year 2008-09 the AO declined assessee's claim after having observation in para 5.4. The AO has given his decision in para 5.3 to 5.5 of the

assessment order. The AO made disallowance of payment made to 15 Management Graduates amounting to 1,71,50,064/- by holding that as the assessee has not furnished any evidence in support of its claim, the expenses for management graduates incurred by the assessee amounting to 1,71,50,064/- cannot be said to be for the purpose of business. He further relied on the decision of Kerala High Court in the case of Ram Bahadur Thakur Ltd (261 ITR 390) pertaining to disallowance u/s 40A(2) of the Act.

10. The CIT(A) has given his findings in para 4.3 of the appellate order. Learned CIT(A) upheld the addition made by the AO by holding as follows:

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a) No evidence has been furnished by the Appellant as to services rendered by these Management Graduates either to the Appellant Company or any of its Group concerns.

b) No evidence were submitted as regards which employees were sent on deputation and to which companies, what services were rendered, who had reimbursed the salaries of these graduates and the respective amount of reimbursement and the terms and conditions agreed etc.

c) No evidence is furnished in respect of new business brought in by the Management graduates.

d) On perusal of Profit and Loss Account for the year, it is seen that the appellant has shown the consultancy and professional receipts of Rs 12.4 crores as against preceding year's receipts of Rs 11 crore (approx). As against approximately 10% increase in its revenue, the Appellant had claimed employees cost of Rs 8.8 crores as against the preceding years employees cost of approximately 5 crores. Thus there is disproportionate increase in administrative and other expenses in comparison of the preceeding year (Rs 8.25 crore as against Rs 6.48 crore in preceeding year)

e) Thus impugned expenditure did not justify its admissibility as a revenue expenditure having being incurred wholly and exclusively for the purpose of business.

11. In A.Y. 2009-10 the AO disallowed similar claim of 3,48,29,461/- out of the salary costs incurred by the assessee on its employees. By the impugned order the CIT(A) confirmed the action of the AO.

Now both assessee and Revenue are in appeal before us for the disallowance of management fees.

12. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record we found that the assessee is a company engaged in the profession of rendering management consultancy services to the Hinduja Group. The assessee M/s. Hinduja Group India Ltd., is a subsidiary of Aasia management & Consultancy Pvt. Ltd., a controlling entity which has a controlling interest in the management of the listed entities of the Hinduja Group, namely:

- i. Ashok Leyland Ltd.
- ii. Hinduja Foundries Ltd.
- iii. Indusind Bank Ltd.
- iv. Hinduja Ventures Ltd.
- v. Hinduja Global Solutions Ltd.
- vi. Gulf Oil Corporation Ltd.
- vii. Indusind Media & Communications Ltd.
- viii. INE Entertainment Ltd.

The assessee company was formed on 16th July, 1993. The object clause No. 1 as per the Memorandum of Association of the company is as under: -

"To act as consultants, retainers and advisers on all matters and problems including administration, finance, management, production, purchase, sales, marketing, advertisement, publicity material, cost control, law and consultancy to Hinduja group of companies."

From the record we find that in pursuance of its main object as stated above, since 1993, the assessee acts as Corporate Management Centre basically rendering centralized corporate services such as managerial, technical, legal and other general consultancy services in the field of business, finance, administration etc. to various entities of the Hinduja Group. In this role of a Corporate Management Centre to the Hinduja Group of companies, the assessee undertakes broadly the following activities:

- a) To identify areas of growth for these entities.
- b) Scope for improvement & reporting for performance.
- c) Preparation of annual budgets and long range plans of Group companies.
- d) Performance monitoring of Group companies.
- e) Identifying companies for future acquisitions.
- f) Helping group companies to raise finance.
- g) Identifying senior key personnel and placing them in these group entities.

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h) Formation of a corporate governance system for these entities and monitor adherence thereto.

i) Handling of inter group legal issues.

13. From the record we also find that during A.Y. 2008-09 the assessee company has entered into several service agreement contracts with its Group Companies, (Ashok Leyland, Gulf Oil Corporation, Hinduja Global Solutions, IndusInd International Holdings Ltd., and Hinduja Ventures Ltd.) out of which one of the activities of such service agreement is that business proposals are to be developed directly .on behalf of its clients, either with full time staff employed by the assessee company or to the task force along with staff of its client's company. The agreements record the agreement on the services to be provided as per requirement of each Company and the fixed fees for the required services. The agreements are renewed each year and usually the client agrees for a fixed fee for the entire year. As the assessee is engaged in business of management consultancy services, employee cost is major expenditure of the assessee. For providing the requisite services, the Human Resource Head of the assessee company visits Top 5 Management Institutes in India viz.; Indian Institute of Management (IIM)-Ahmedabad, Bangalore, Kolkata and Lucknow, XLRI - Jamshedpur and ISB - Hyderabad, to hire fresh management graduates as full time employees on the rolls of the company. These graduates are from Engineering background and prior to joining the MBA Course, their work experience in Core Industry Sector of minimum 2 years is preferably screened. After selection of these candidates as employees of the assessee company, they go through on-the-job assignments/Projects across various group companies (with whom the assessee company has consultation contract). These are solution based LIVE projects (and not academic projects), which directly contribute to the business of the companies. The aim is to provide cross industry and cross functional exposure so that they develop General Management Skills for the assessee company. During A.Y. 2008-09, assessee has hired 15 Management Graduates. Copies of the employment agreements entered M/s. Hinduja Group India Ltd., into by the assessee with these 15 trainees along with the Form 16 evidencing payment of salary and deduction of TDS were filed before the lower authorities. A perusal of these employment agreements will reveal that these are regular employees of the assessee company and are designated as Asst. Managers. They act as management trainees and assist other senior professionals of the assessee and are not independent consultants. Since these are employees of the assessee company, the professional tax etc., are deducted from their salary and taxes under Section 192 of the Income Tax Act are deducted and paid, as per provision of law. The assessee is a retainer with various group entities and is dependent on these entities for earning its business income. In the case of retainership agreements, there is no scope to revise the remuneration till the time of renewal even if costs exceed due to various factors, for example, the number of employees are not sufficient or they do not have necessary aptitude. Further this is a common feature in service Industry wherein even if the fees from regular clientele cannot be recovered in full or in part, yet the client has to incur basic costs such as salaries, overheads etc. Accordingly, the assessee has to provide services to such clientele irrespective of recovery made and for this purpose had to hire employees. Precisely all these happened in assessee s case.

14. From the record we also found that the industry was facing a slowdown in the period 2007-08 and hence many of the clients which are also listed entities of assessee including Ashok Leyland were not willing to increase the professional fees. Owing to the slowdown the revenue collection of the assessee suffered. Considering the slowdown in economy and the possibility of recovery of expenses being low, the assessee substantially reduced the expenses wherever possible like administrative costs and marketing, however the cost on employees could not be reduced as being in service industry the assessee would not be able to survive without employing such suitably skilled workforce.

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15. The learned AO has in para 5.4 stated that in view of the provisions of section 40A(2) so far as a company is concerned, it is open to the taxing authorities to go into the reasonableness of the expenses also. We observe that in the case at hand, payment is made to the employees who are unrelated third parties and no payment has been made to the group companies or related parties, hence provisions of section 40A(2) are not applicable. Further even section 40A(2) provides for disallowance of excessive payments made to Group Companies and there is no provision in the Act for disallowance of under charging of fees. The observations of the AO and CIT(A) that no evidence were submitted as regards which employees were sent on deputation and to which companies, what services were rendered, who had reimbursed the salaries of these graduates and the respective amount of reimbursement and the terms and conditions agreed etc. is not correct as assessee had duly submitted the letter of appointment of these trainees, the Form 16 and the service agreement entered into with group entities and the recovery made before the lower authorities.

16. From the above we also found that the assessee was providing similar services and recovery was made in earlier year A.Y. 2006-07 and A.Y. 2007-08 but no disallowance of expenses was made in these years. While the services provided to group companies is the same in the current year, the only difference is that the assessee has hired management trainees in the current year. The AO has also accepted that the expenses were incurred by the assessee company and these are not bogus expenses. However, the AO has made disallowance only in respect of A.Y. 2008-09 only because taxable income has reduced in this year and assessee has net loss of `1.76 crores as per audited financials.

17. Further in A.Y. 2010-11, similar addition made by the AO was deleted by the CIT(A) after having detailed observation and findings in para 4.5 of his appellate order as reproduced hereinabove. Similarly no disallowance has been made for similar expenses incurred on management trainees in subsequent assessment years 2011-12. Copy M/s. Hinduja Group India Ltd., of the assessment order passed for AY 2011-12 is also placed on record. The decision to hire the 15 Management graduates was a business decision taken by the management out of commercial expediency. It is a well settled principle that expenditure has to be adjudged from the point of view of businessman and not of the Revenue. It is also settled principle in law that expenditure need not immediately result in earning of profits but if wholly and exclusively laid out for business, it is a revenue expenditure. Therefore, the views of the AO for disallowing the employees costs are not warranted on merits of the case, and AO has not taken a holistic view of the facts and ground realities of industry in which assessee

operates.

18. In the case of Walchand & Co. Pvt. Ltd. 65 ITR 381 the Hon ble Supreme Court has held as under: -

"Section 37(1) of the Income-tax Act, 1961 [Corresponding to section 10(2)(xv) of the Indian Income-tax Act, 1922] - Business expenditure -Allowability of - Assessment years 1953-54 and 1954-55 - Assessee company was engaged in business of managing agent - It's business was managed by three directors and it had also appointed three executive officers - By a resolution, assessee increased remuneration of above directors officers and other employees with a retrospective effect - ITO disallowed claim of assessee for deduction assessee during relevant assessment years on around that since increase in remuneration of salary of officers was not reflected in increase in profits of assesses, and it was not expenditure which could be justified as laid out wholly and necessarily for purposes of business under section 10(2)(xv) of Act of 1922 - Order of ITO was upheld by AAC - However, Tribunal partially allowed remuneration increased with respect to directors employees but did not give any reason for disallowance remaining part - On reference, High Court took view that work of assesses had increased considerably and had become more strenuous by reason of prosperity of managed companies and it would be reasonable and natural to infer that 'strain on both directors and top executives had increased justifying increase in their remuneration' - Whether rule that increased remuneration can only be justified if there be corresponding increase in profits of employer was erroneous - Held, yes - Whether in facts and circumstances of case, High Court was justified in holding that order of Tribunal disallowing claim for allowance of whole of additional remuneration was not supported by any evidence - Held, yes M/s. Hinduja Group India Ltd.,

19. The Hon ble Supreme Court in the case of CIT v. Malayalam Plantations Ltd. (1964) 53 ITR 140 (SC) explaining the meaning of the word "for the purpose of business" has held that "the expression „for the purpose of business' is wider in scope than the expression „for the purpose of earning profits . Its range is wide; it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a precondition to commerce or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assesses shall incur it in his capacity as a person carrying on the business."

20. The Hon ble Supreme Court in the case Indian Bank Ltd. 56 ITR 77 observed that there is no need to examine, whether the expenditure or allowance, which is permissible must be capable of producing taxable income.

21. The House of Lords in *British Insulated & Helsby Cables Ltd. (1925)* tax cases 155, has held that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on the business. The above test has been approved by this court in several decisions e.g. *Eastern Investments Ltd. vs. CIT (1951)* 20 ITR 1 (SC) and *CIT v. Chandulal Keshavlal & Co. (1960)* 38 ITR 601 (SC).

22. The Apex court in *Travancore Titanium Products Ltd. vs. CIT* 60 ITR 277 has held that "The nature of the expenditure or outgoing must be adjudged in the light of accepted commercial practice and trading M/s. *Hinduja Group India Ltd.*, principles. The expenditure must be incidental to the business and must be necessitated or justified by commercial expediency. It must be directly and intimately connected with the business and be laid out by the taxpayer in his character as a trader. To be a permissible deduction, there must be a direct and intimate connection between the expenditure and the business i.e. between the expenditure and the character of the assessee as a trader, and not as owner of assets, even if they are assets of the business."

23. The Hon'ble Supreme Court in the case of *S.A. Builders Ltd.* 228 ITR 1 observed that no businessman can be compelled to maximize its profit and the authorities must not look at the matter from their own view point but that of a prudent businessman. The Hon'ble Supreme Court further observed that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the Board of Directors and assume the role to decide how much is the reasonable expenditure having regard to the circumstances of the case.

24. The ITAT Mumbai Bench in the case of *REPL Enterprises Ltd. vs. ITO* [2010] 38 SOT 459 (Mum.) held that the AO had disallowed the assessee's claim mainly on the ground that the salary was paid to the personnel who were working for a sister concern *REPL Engg. Ltd.* The said observation of the AO was on presumption without any basis. The CIT(A) was of the view that there was some kind of unity at control level, which meant that the details about the business activity were otherwise available to the Directors. However, it was not open to the department to prescribe what expenditure an assessee should incur and in what circumstances it should incur that expenditure. The expression 'wholly and exclusively' used in section 37(1) does not mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such an M/s. *Hinduja Group India Ltd.*, expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee is entitled to deduction, even though there might not be compelling necessity to incur such an expenditure. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction if it otherwise satisfies the test laid down by law. Once it is found that the expenditure is incurred wholly and exclusively for the purpose of business, the assessee is entitled to the deduction of expenses. One of the grounds of disallowance of the expenditure was that dividend income had been assessed under the head 'Income from other sources' and not 'Income from business'. What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of

making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. Section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure would be deductible only if any income is made or earned. There is, in fact, nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain, natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should, in fact, have been earned as a result of the expenditure. Moreover, when a Profit & Loss Account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It is true that the language of section 37(1) is a little wider than that of section 57(iii), but that cannot make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed M/s. Hinduja Group India Ltd., according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning, not warranted by the language of the section and, in fact, contrary to such language. In the instant case, the assessee was engaged in the business of investment. The assessee had made investment in shares of REPL Engg. Ltd. under the MoU. The assessee had incurred the salary expenditure for the purpose of the said investment that was for the purpose of business. To know profit/income from business one has to prepare profit and loss account. In the profit and loss account all receipts and expenditures are to be taken and net profit is to be calculated. Once profit/income is determined, it is immaterial whether that income is offered for tax under the head "Income from business" or "Income from other sources". The Supreme Court in the case of United Commercial Bank Ltd. v. CIT [1957] 32 ITR 688 held that the business income is broken up under different heads only for the purpose of computation of the total income; by that break up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Act for computation of income. The genuineness of impugned expenditure was not in doubt. The expenditure incurred wholly and exclusively for the purpose of business was allowable. Therefore, the assessee was entitled to deduction of salary expenses in question.

25. We observe that the decision of the Hon ble Kerala High Court in the case of Ram Bahadur Thakur Ltd. 261 ITR 390, relied by the AO, is distinguishable on facts which is evident from facts stated below and the ratio of this decision cannot be applied to facts in case at hand: -

"Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of - Assessment year 1990-91 - Whether in every case it is a question of fact whether expenditure was incurred wholly and exclusively for purpose of trade or business of assessee and it is for assessee to plead and prove before authorities that expenses were incurred wholly and exclusively for purpose of business of company -Held, yes - Whether when a claim for deduction of an expenditure under section 37(1) is made by an assessee, Assessing M/s. Hinduja Group India Ltd., Officer is bound to conduct an enquiry as to whether assessee satisfies all requirements of section and to afford

an opportunity to assessee to establish its claim before either allowing or rejecting claim - Held, yes - Whether in all cases where an assessee makes a claim for deduction of an expenditure under section 37(1), Assessing Officer is bound to consider said claim, be it in respect of expenses for foreign tour of Director of a company or in respect of expenses for foreign tour of wife of Director accompanying him, meticulously keeping in mind legal principles governing question and to arrive at a decision either way after affording a reasonable opportunity to assessee - Held, yes - Assessee-company claimed a deduction of expenditure incurred on foreign travel of a director and his wife - Assessing Officer, without conducting any inquiry and affording an opportunity to assessee-company to establish its claim, simply assumed that foreign travel by director of assessee was for business purposes but foreign travel of wife accompanying director was not for business purposes and disallowed foreign travel expenditure pertaining to director's wife - Tribunal relying on earlier decision of assessee's case upheld Assessing Officer's order

- Whether since there was no categorical finding by Tribunal on facts as to requisite condition, viz., expenditure was incurred wholly and exclusively for purpose of business of assessee, order of Tribunal was to be set aside and it was to be directed to dispose of appeal afresh in accordance with law - Held, yes"

26. In view of the above discussion and applying the ratio of the decisions referred herein above to the facts of instant case we do not find any justification for disallowance of remuneration paid to management graduates in all the three years under consideration.

27. In A.Y. 2008-09 the assessee has also aggrieved by disallowance of 10,82,059/- made under Section 43B of the Act.

29. The AO has discussed this issue in para 4, page 3 to 4 of the assessment order. The AO observed that out of amount of 43,80,414/- shown as 'Service Tax payable' in the Audited Balance Sheet as at 31.3.2008, the assessee has paid an amount of 98,355/- in various months of subsequent year and disallowed the balance of 10,82,059/- under Section 43B of the Act. By the impugned order the CIT(A) confirmed the order of the AO after having discussion in paras 6.1 to 6.3 of his order as under: -

M/s. Hinduja Group India Ltd., "a) As fairly informed by the learned AR that the AO's action on this issue in the Appellant's case for AY 2007-08 has been confirmed by the learned predecessor CIT(A).

b) The learned AR of the appellant could not furnish any evidence to establish that service tax component was included as a trading receipt in the Profit and Loss Account.

If service tax component is not included as a trading receipt, no question arises for deduction either on accrual basis or on payment basis.

c) Accordingly the disallowance of service tax is warranted and hence upheld.

d) The CIT(A) directed the AO to verify the actual amount of service tax claimed by the Appellant and disallow the whole amount of service tax claimed by the Appellant to the extent the service tax component is not included in its trading receipt credited to its Profit and Loss account.

30. We find that the issue is covered by the decision of the Tribunal in assessee's own case for A.Y. 2007-08 dated 09.11.2012 wherein the matter was restored back to the file of the AO after having the following observation: -

"10. We have heard both the parties and their contentions have carefully been considered. It is the contention the Ld AR that the disallowed amount has not been debited to P&L Account and service tax has also not become payable as the payment for services rendered was not realized. In order to verify all these contentions, we consider it just and proper to restore this issue to the file of the AO with a direction to re-adjudicate the same as per law after giving the assessee a reasonable opportunity of hearing. We direct accordingly. This ground is allowed for statistical purposes."

31. We further observe that as per the directions of Hon Mumbai ITAT, the Ld Assessing Officer passed order dated 11.10.2013 giving effect to the order of Hon Mumbai ITAT and held that: -

"3. In response to statutory notice, the assessee company filed the written submission. Assessee has contended that service tax is paid to the treasury, as soon as, the payments along with service tax are received by the assessee. In respect of the disallowance made, the service tax was not received at all and amount was outstanding in the books of account. Since service tax has not received, therefore liability to pay service tax is not attracted. Further it is not routed through the profit and loss account.

M/s. Hinduja Group India Ltd., The contention of the assessee company is found to be considerable. Since assessee has not received the fees and service tax, question of deposit the same does not arise. Therefore disallowance made u/s 43B is not warranted and accordingly assessee gets the relief of Rs 4,42,755."

31. For AY 2008-09, the total Service Tax payable by the assessee was 42.56,213/-, out of which a sum of 32.97,322/- has been paid in various months of the subsequent accounting year, as and when the Professional Fees were received. According to Rule 6(1) of the Service Tax Rules as amended w.e.f. 16.10.1998, service tax is required to be paid only on the value of taxable services received in a particular month or quarter, as the case may be, and not on the gross amount charged or billed to the client. The relevant extracts of this provision are reproduced as under:

"Payment of Service Tax

6. [1] The service tax shall be paid to the credit of the Central Government, -

(i) By the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) By the 5th day of the month, in any other case, Immediately following the calendar month in which the payments are received, towards the value of taxable services."

Accordingly the liability as reflected on 31.03.2008 in the Balance Sheet has been paid over the subsequent months as and when the fees were received from the client group companies. Details of the Service tax collected and service tax Paid are given at page no 105 to 106 of the paper book volume-I for AY 2008-09. Out of 43,80,414/- a sum of 32,98,355/- has been paid in various months of the subsequent accounting year, since collected in the subsequent years, as realization of fees was received in that period. An amount of 10,27,697/- pertaining to Service Tax still remained unpaid, since the fees were not collected. Since the fees were not collected / realized, the Service Tax liability had not crystallized, hence the amount of 10,27,697/- being Service Tax on unrealized fees cannot be disallowed under Section 43B of the Income Tax Act. However in Para 4, the AO disallowed a sum of 10,82,059/- under Section 43B of Act, in respect of fees receivable of M/s. Hinduja Group India Ltd., 87,81,217/-, the analysis of the same is found at Page 108 to 109 of the Paper Book volume-I for AY 2008-09. Out of the fees receivable of 87,81,217/- in the immediately succeeding assessment year, the assessee wrote off fees as bad debts amounting to 55,07,692/- and of the balance of 28,33,250/- still remained to be receivable. Since these fees were not received by the assessee, naturally service tax liability also did not accrue as per the provision of section 6 of the service tax act hence not disallowable under section 43 B of the Act. Even otherwise disallowance under Section 43B was not warranted in this case, as Service Tax was not claimed as an expenditure, neither it stood debited to the P&L Account by the assessee. In this context we relies on the decision of Delhi High Court rendered in the case of Noble & Hewitt (I) (P) Ltd. - 305 ITR 324 followed by the Mumbai Tribunal decision in the case of Pharma Search - 21 Taxman.com 44.

32. In the case of CIT vs. Ovira Logistics (P.) Ltd. 377 ITR 129 the Hon'ble Bombay High Court has held as under: -

"Section 43B of the Income-tax Act, 1961 - Certain deduction to be allowed only on actual payment (Service tax) - Assessment year 2007-08 - Whether when services were rendered, liability to pay service tax in respect of consideration would arise only upon receipt of such consideration and not otherwise - Held, yes - Whether where it was found that before end of year, amount on which service tax was payable had not been received from parties to whom services were rendered, claim of service tax paid could not be disallowed - Held, yes [Paras 9 and 10][In favour of assessee"

In view of above discussion we do not find any justification for the disallowance for 10,82,059/- made under Section 43B.

33. In A.Y. 2009-10 also the AO has disallowed 3,48,29,461/- from the salary cost incurred by the assessee on its employees. The AO held that income of the assessee company has been reduced by

more than one-fourth whereas the expenses incurred as employee cost has increased by more than 30%. Income is from related parties. Thus the assessee is charging less from the group company vis-à-vis the cost incurred by it. The AO in para 4.3 gave his contentions on why he does M/s. Hinduja Group India Ltd., not agree with the assessee's submissions. In para 4.5 the AO disallowed 30% of employee cost of 11,60,98,208/- amounting to 3,48,29,462/-. By the impugned order the CIT(A) confirmed the action of the AO.

34. Following the reasons given for A.Y. 2008-09, we do not find any justification for the disallowance so made. Disallowance made in A.Y. 2010-11 was deleted by the CIT(A) after having detailed observation in paras 4.2 to 4.4. The findings recorded by the CIT(A), are as per material on record, are in consonance with the reasoning given by us in A.Y. 2008-09. Accordingly we do not find any reason to interfere with the finding so recorded by the CIT(A).

35. It is pertinent to mention here that in A.Y. 2010-11 during the course of appellate proceedings, CIT(A) has asked assessee to file the chart giving details of services rendered by the management trainees. As per CIT(A)'s direction same was filed by the assessee vide letter dated 18.8.2015

36. Rule 46A deals with production of additional evidence before the Deputy Commissioner (Appeals) and Commissioner (Appeals). However, it is pertinent to note that the exceptions set out in rule 46A do not deal with the powers of the first appellate authority to make further enquiry or to direct the Assessing Officer to make such enquiry. Sub-rule (4) of rule 46A specifically provides that the restrictions placed on the production of additional evidence by assessee would not affect the powers of the Appellate Authority to call for the production of any document or the examination of any witness to enable him to dispose of the appeal. The first appellate authority is legally empowered to make any enquiry as he thinks fit as contemplated under section 250(4). The scope of powers of first appellate authority is coterminous with that of the Income-tax Officer and he can do what the Income-tax Officer can do.

M/s. Hinduja Group India Ltd.,

37. Sub-rule (4) contained therein is an overriding power since it is a non obstante clause beginning with 'nothing contained in this rule'. Thus, the power of the appellate authority clearly overrides the provisions of sub-rules (1), (2) and (3) of rule 46A and it is open to the said authority to look into any additional document if it considers the same as required to dispose of the appeal or for any other substantial cause. As a matter of fact, the principal reason for the Commissioner (Appeals) in allowing the appeal was the fact that the Assessing Officer had failed to issue specific notice with regard to the services provided and further, he has come to the conclusion that expenses were not incurred for the purpose of business on the basis of details of expenses, employment agreement and Form 16 and agreement with Group Companies for rendering the services filed during assessment proceeding itself. Further the agreement with the Group Companies already listed the services which assessee would have to provide under the retainership agreement and also the employment agreements listed the services which the employees would provide to the company. It was only to further verify that the expenses are incurred for the purpose of business that the CIT(A) asked the assessee to submit the details of service rendered in tabular form and employee wise. Knowledge of

the Revenue to the documentary evidence adduced at the appellate stage, is per se apparent on the face of the record and assessee has not submitted any new evidence but has only summarised the details submitted before AO in tabular form and employee wise. Thus, it was a clear cut case of exercise of the overriding power under rule 46A(4) of the rules and not really a case of permitting an assessee to file fresh document on the prayer of the assessee. Thus there is no violation of provisions of Rule 46A. For this purpose reliance may be placed on the decision of the Hon ble Patna High Court in the case of CIT vs. Sagar Construction (P) Ltd.⁵⁶ taxmann.com 434.

38. In view of the above we do not find any contravention of Rule 46A.

M/s. Hinduja Group India Ltd.,

39. In the result, appeals for A.Y. 2008-09 and A.Y. 2009-10 are allowed whereas the appeal for A.Y. 2010-11 is dismissed.

Order pronounced in the open court on this

17th May, 2018

(AMARJIT SINGH)
JUDICIAL MEMBER

(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 17th May, 2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai