

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**ITA No. 6387/Del/2013
(ASSESSMENT YEAR-2007-08)**

ACIT, Circle 26(1), New Delhi.	vs	Harish Mohini Kathuria, 191, Nangil Sakarwati, Najafgarh, New Delhi. AAJPK5044M
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Appellant by	Shri S.K. Jain, Sr. DR
Respondent by	Shri Shalender K. Bajaj, CA

Date of Hearing	20.10.2015
Date of Pronouncement	21.10.2015

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

The present appeal filed by the Revenue arises out of the order passed by the Id. CIT(A)-XVII, vide order dated 21/08/2013 for A.Y. 2007-08 on the following grounds:

“On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:

1. *Deleting the disallowance, made by the Assessing Officer, ignoring the fact that the expenses incurred by the assessee were not commensurate with the decline in sales and the assessee failed to offer a satisfactory explanation*

in this regard during the course of assessment proceedings.

2. Ignoring the facts that the assessee had himself admitted element of personal use in respect of conveyance expenses and also offered no satisfactory explanation before the Assessing Officer regarding disproportionate trend in conveyance expense vis-à-vis total sales.

3. The Appellant craves the right to add, alter or amend any ground of appeal.”

2. Brief facts of the case as observed by the Assessing Officer are as under:

The assessee filed his return of income declaring total income at Rs. 43,05,474/- on 31/10/2007. Notice u/s 143(2) was served on the assessee. In response to the notice the assessee appeared and filed documents and other supporting materials which were examined by the ld. Assessing Officer. During the assessment proceedings, the ld. Assessing Officer observed that the assessee is engaged in the business of manufacturing of readymade fashion garments.

3. During the course of the assessment proceedings, the assessee had submitted P&L Account which has been summarized as under:

	31.03.2007	31.03.2006
Export Sale	22,63,44,716	32,74,83,770
Domestic Sale	72,38,472	57,42,127
Total Sale	22,35,83,188	33,32,25,897
Net Profit	43,05,957	2,18,97,281

4. The ld. Assessing Officer observed that the net profit has come down from Rs. 2,18,97,281/- (A.Y. 2006-07) to Rs. 43,05,957/- (A.Y. 2007-08). The assessee was asked to explain why there is an increment in the expenditures in spite of the fact that the total sales and net profit has come down drastically. The ld. Assessing Officer

called for a justification as to how the total expenses have been incurred wholly and exclusively for the purpose of business carried out by the assessee in respect of conveyance, documentation expenses, courier expenses, general miscellaneous expenses, professional expenses. The ld. Assessing Officer concluded the assessment proceedings by making an adhoc disallowances in respect of the above referred expenses.

5. Aggrieved by the order of the ld. Assessing Officer the assessee went into appeal before the ld. CIT(A). The ld. CIT(A) pursuant to his findings from para 5 to 11 deleted the adhoc expenses made by the ld. Assessing Officer.

6. Aggrieved by the order of the ld. CIT(A). The Revenue is in appeal before us.

7. The ld. DR relies upon the order of the ld. Assessing Officer.

8. The ld. AR submitted that the entire additions made by the ld. Assessing Officer are arbitrary, and on adhoc basis. The disallowances had been made without bringing on record any specific material even though, complete details were filed during the course of assessment proceedings. The entire additions have been made on surmises and conjectures, treated to be unreasonable, solely on the basis of comparing with previous year figures and sales. The ld. AR further submitted that the expenditures disallowed are indirect expenses and are not primarily related to sales, further, previous year cannot be any basis for adjudicating the same as reasonable or unreasonable. The ld. AR submits that all the details called for by the ld. Assessing Officer during the

assessment proceedings were furnished, and after the explanations and submissions that were filed during the assessment proceedings, the ld. Assessing Officer did not ask for any further information in the records. It has been submitted by the the ld.AR that, the ld. Assessing Officer has nowhere disputed the expenses so claimed by the assessee. The ld. CIT(A) has observed that, it is an undisputed fact that the assessee has filed all the necessary bills relating to the expenditure claimed in the returns.

9. The ld. CIT(A) in his order has recorded that, in assessee's own case for AY 2003-04, the Assessing Officer had made adhoc disallowance treating the expenses to be unreasonable and excessive compared to earlier years which has been deleted vide the order dated 1.12.2006, passed by ld.CIT(A) (copy of the order enclosed at 17 to 27 of paper book).

10. Similarly for AY 2006-07 disallowances of expenses were made by the Assessing Officer since the expenses incurred were higher than the previous years. The then CIT(A) deleted the entire additions, the department had challenged the order of the ld. CIT(A) for AY 2006-07 before the Hon'ble ITAT. The Hon'ble ITAT in ITA No. 1872/Del/2010, vide its order dated 26/08/2010 dismissed the appeal of the Department (copy of the order is at page 10 to 16 of the PB) the relevant extract is as under:

“10. We have heard both the counsel and perused the record. We find that in this case the sole reason given by the Assessing Officer to make the adhoc disallowance is that there has been increase in the expenses in terms of percentage as compared to previous year. In our considered opinion this alone

cannot constitute reason for making estimated disallowance. Assessing Officer has not pointed out any specific defect in the vouchers. There is also no finding that any expenditure was found to be not genuine or not related to the business. Thus, the disallowances are purely on adhoc basis. It is a settled law that addition based on surmises cannot be sustained.”

11. The ld. AR has produced at page 28 of the paper book, the judgment passed by the Hon’ble Delhi High Court in the assessee’s own case in ITA No. 679/2011, for assessment year 2006-07, vide order dated 28/04/2011. The Hon’ble High Court held as under:

“After going through the orders of the authorities below, we are of the opinion that the Tribunal rightly observed that the disallowance of a part of expenditure on account of wages as well as consumable goods was on adhoc basis and there was no rational behind the same.

The Tribunal also rightly recorded that the Assessing Officer had not pointed out any specific defect in the vouchers and there was no finding that any expenditure was not found to be genuine or not relating to the business.

On this ground, the disallowance was rightly held. No substantial question of law arises for consideration. The present appeal is, accordingly, dismissed.”

We have perused the records produced before us and the order passed by the authorities below.

10. We are of the considered opinion that in this case the sole reason given by the Assessing Officer to make the adhoc disallowances is that there has been increase in the expenses in terms of percentage as compared to the previous year. In our considered view this alone cannot be constitute reason for making

estimated disallowance. The ld. Assessing Officer has not pointed out any specific defect in the vouchers/bills. There is also no finding that any expenditure was not found to be genuine or not related to the business. Thus, disallowance is purely on adhoc basis. It is a settled law that addition based upon surmises and conjectures cannot be sustained.

11. In this regard we placed reliance upon the decision of the Hon'ble Supreme Court in the case of CIT (Bom.) vs. Walchand & Company Pvt. Limited in 65 ITR 381, wherein it was held that "in applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively for business, the expenditure has to be adjudged from the point of view of the businessman and not of revenue. Thus, we find that Assessing Officer has made the disallowance purely on guess work and without cogent reasoning. Under these circumstances, adhoc disallowance cannot be sustained. Accordingly, we do not find any infirmity or illegality in the order of the ld. Commissioner of Income Tax (Appeals) in this regard. Accordingly we confirm the same.

12. In the result, the appeal filed by the Revenue is dismissed.

The order is pronounced in the open court on 21/10/2015

Sd/-

(N.K. SAINI)

ACCOUNTANT MEMBER

Dated: 21/10/2015

**Kavita, P.S.*

Sd/-

(BEENA PILLAI)

JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date
1.	Draft dictated on	20.10.2015
2.	Draft placed before author	20.10.2015
3.	Draft proposed & placed before the second member	20.10.2015
4.	Draft discussed/approved by Second Member.	20.10.2015
5.	Approved Draft comes to the Sr.PS/PS	21.10.2015
6.	Kept for pronouncement on	21.10.2015
7.	File sent to the Bench Clerk	26.10.2015
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	