

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.3784/Mum/2012
Assessment Year: 2001-02**

M/s FFC Aromas Pvt. Ltd. Plot No.A-42, Street No.2 Marol Industrial Area Andheri (E) Mumbai-400093	बनाम/ Vs.	Income Tax Officer Ward 8(1)(4) Room No.206/26 Aayakar Bhavan, M.K.RD Mumbai-40020
(Appellant)		(Respondent)
P.A. No.AACF2119C		

Appellant by	Shri Hiro Rai (AR)
Revenue by	Shri G.M. Doss (DR)
सुनवाई की तारीख/ Date of Hearing:	28/07/2016
आदेश की तारीख / Date of Order:	09/09/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against order of Ld. Commissioner of Income Tax(Appeals), Mumbai-16, {(in short 'CIT(A)}}, dated 15.03.2012 passed against order giving effect to the ITAT's order passed by the AO vide his order dated 07.12.2011.

2. During the course of hearing, arguments were made by Shri Hiro Rai, Authorised Representatives (AR) on behalf of the Assessee and by Shri G.M. Doss, Departmental Representative (DR) on behalf of the Revenue.

3. Brief background and the facts of the case are that in this case, scrutiny assessment for A.Y. 2001-02 was completed u/s. 143(3) on 19.03.2004 by way of making addition of Rs.16,61,674/- on account of research & development expense and Rs.1,15,943/- on account of travelling and other expenses thereby assessing the total income at Rs.29,90,287/- as against returned income of Rs.12,12,670/-. Aggrieved by the said assessment, the assessee had preferred an appeal before the Ld. CIT(A). Ld. CIT(A) had upheld the addition made on account of disallowance of expenditure on scientific research and deleted the addition made on account of travelling and other expenses. Subsequently, the assessee preferred appeal before the Tribunal. The Tribunal vide order dated 30.07.2008 had set aside the issue to the file of the AO to decide the issue after considering evidences with respect to the infrastructure to carry out necessary research work for the development of Citronella and other relevant details after giving a reasonable opportunity to the assessee. In fresh assessment proceedings, the assessee filed its reply. The AO held that the assessee had claimed expenses as revenue expenses under the head 'research & development expenses' in its profit & loss account and that

no added deduction was claimed in the computation of income. The AO further placed reliance on the provisions of section 35 of the Act. The disallowance was repeated in the assessment order and the AO also discussed the disallowance u/s 35 & 37 and made the disallowance on both counts in this regard.

3.1. Being aggrieved, the assessee filed an appeal before Ld. CIT(A) and submitted detailed explanation along with requisite evidences. During course of appeal before Ld. CIT(A), it was submitted that the amount was spent on the research which is related to the business of the assessee company incurred not prior to commencement of its business and as such allowable under the clause (i) of sub-section (1) of section 35, which does not require payment amount to a registered/approved/notified entity only. The assessee further submitted that the directions issued by the Tribunal was to verify whether the GBPL to whom the payment was made was having infrastructure or not, but the AO had travelled beyond the directions given by the Tribunal. The assessee further submitted that there are number of judicial pronouncements which have held that even if an assessee gets the work done through another entity, it is still allowable as expenses. The assessee further submitted that there was no question of siphoning off the assessee company's funds as it was shown to the AO that the payments were made in piecemeal by the assessee company only for the aforesaid purposes of cultivation and payment was made against the actual work done and services rendered by GBPL. The

assessee further submitted that ultimately no income was generated by GBPL in the process and that there was no carry forward of any loss, nor taxable profit for the year under appeal, and thus by debiting the expenditure in the books of account the assessee did not get any tax benefits.

3.2. Ld. CIT(A) considered the submissions of the assessee but did not agree with the same. It was observed by the him that from the balance sheet of GBPL, it was indicated that the said company did not have requisite infrastructure to carry out scientific research & development and cultivate lemon grass for citronella oil. It was further observed that activity carried out by the said company was primarily of nature of agriculture operations and not related to any scientific research which does not have direct nexus with business of the assessee. It was also observed that the impugned expenses were in fact of the nature of loan to the sister concern. It was also observed that the said company was not a recognized institution u/s 35(1).

3.3. Being aggrieved, the assessee filed an appeal before the Tribunal. During the course of hearing, Ld. Counsel made detailed arguments and drew our attention upon various pages of the paper book to show that exhaustive evidences were submitted in support of claim which have not been considered properly by the lower authorities. He also drew our attention upon section 35(1) and contended that for the purpose of deduction u/s 35(1), it was not mandatory for the aforesaid company to get certification from any authority. Per contra, Ld. DR relied upon the orders of the lower authorities.

3.4. We have gone through the facts of this case and order passed by the Tribunal in the first round as well as details and evidences submitted by the assessee before the lower authorities. It is noted by us at the very outset that Tribunal had sent this issue back to the file of the AO with the direction to consider details and evidences submitted by the assessee with respect to infrastructure and necessary research work for the development of Citronella oil before deciding this issue afresh. It is noted by us that perusal of the orders of the lower authorities reveals that the details have not been properly considered in an objective manner. It was shown to us that whatever details were required by lower authorities, these were duly submitted, but these have been ignored or not considered properly due to few doubts. It is noted that assessee had filed exhaustive submissions along with requisite details and evidences before the Ld. AO. One of the reply filed before the AO was letter dated 24.10.2011. We find it appropriate to reproduce relevant part of this letter as under:

“In this context we submit on behalf of our client that the Learned bench of the ITAT has remanded the case merely to confirm that the infrastructure to carry out necessary research work for the development of citronella was in existence. As stated in our earlier letter and discussed in the hearing from time to time, the necessary and sufficient infrastructure required at the first stage was only agricultural land, agricturist, seeds, fertilizers, adequate water supply etc. as already mentioned in our earlier letter. Along with this letter we are not attaching proofs required by you for the existence of the infrastructure as follows:

“1. Background:

The appellant had in the year 1998 and 1999 been able to bag orders from two of the major players in the soap

industry namely Wipro and Nirma which used Citronella oil derivatives as raw material. Encouraged by the response received from the soap companies the assessee company decided to produce on its own, citronella oil and its derivatives on which the perfumes used by Wipro and Nirma were based since Citronella Oil had to be imported, it proved costly . The company has been carrying out consistently some research with a view to develop new perfumery compounds to be utilized in soap industry. In that context, we are enclosing the extract of the copy of the book named "Synthetic Perfumes" detailing the process of making the citronella oil from the Citronella/lemon grass as required by you.

2. Infrastructure:

With above in mind our client Company looked for appropriate lane to carry out the activity. Some agriculturists and biotechnologists suggested that the land at Baramati is the best suitable land for the cultivation of the lemon grass. Our client was introduced to one Shri Nanasaheb Bhosale, who is from Baramati and is an agricultural consultant. He was consulted and later given the assignment for which he was paid for developing lemon grass.

2.1 Land:

We are enclosing copies of the various communications done for taking the agricultural land totaling to 42 acres on lease for the plantation of lemon grass. These culminated into acquisition of lands and copies of lease agreements, 7/12 extracts indicating that the primary infrastructure for agricultural activity was in place. Enclosed also please find some copies of the drafts/pay orders issued to persons from whom agricultural land taken on lease and also for amount transferred to the agriculturist appointed at Baramati.

2.2 Consultant:

As aforesaid Nanasaheb Bosale was appointed and the copy of his appointment letter, various communications with, him during the period of cultivation, his report of day to day activity etc, are enclosed.

2.3 Operations:

We are enclosing the copies of estimates, various quotations called for required at the various stages of the production of citronella oil as suggested by the agriculturist appointed from time to time.

2.4 Recurring Expenses:

We are also enclosing copies of major bills of expenditure towards Bore-well, laying water pipeline etc. From this, it can be seen that the company had all the facilities for planting the required seeds.

We also enclose copies of the statements of expenses incurred on seeds, fertilizers, manure etc, and cash vouchers on sample basis to indicate the expenses incurred for the plantation done during the cultivation period. We are also enclosing the attendance register of the various persons involved in the cultivation activity as mentioned is enclosed to confirm the manpower deployed for the above cultivation.

We would like to place before you the fact that unfortunately a lot of other documents pertaining to the year under assessment mostly related to this activity was lost in the water logging on 26th July 2005 which were stored at our office for being produced before the AO. To substantiate this, we are attaching herewith the copy of affidavit in that connection and we also produce before you various photographs taken at the time of water logging.

We trust that the above details and documents submitted and various files, bank statements produce will suffice your requirement to convince you that there was an adequate infrastructure to carry out the necessary research for the development of Citronella, a product required by our client company and consequently for completion of the set aside assessment of our above client for the A.Y. 2001-02. We trust this will fulfill your requirement to complete the assessment.”

3.7. It is noted that after receiving this letter, nothing more was asked by the AO and he simply proceeded to disallow the expenses after making his own analysis. First of all, the AO referred to and analysed the provisions of section 35(1) (i) in his own manner, and whereby he concluded that the payee was required to be certified by the prescribed authority for this purpose. It is noted by us that AO has misunderstood the provisions of law in this regard. As per plain reading of section 35, the certification was required only if the expenditure was incurred before the commencement of business. For an expenditure to be allowable u/s 35(1)(i) of the Act, primary requirement of the law is that expenditure laid out or expended on scientific research should not be capital expenditure and should be related to the business of the assessee. It is nobody's case that it is a capital expense. It is not disputed that the assessee was engaged in the business of perfumery compound to be utilized in the soap industry. It is also not disputed that Citronella oil was one of the major raw materials to be used as a new perfumery compound to be used in the manufacturing of soap. It is also not disputed that Citronella oil is extracted from a particular variety of Lemon Grass. It is also not disputed that the aforesaid company namely Greenclone Biotech P. Ltd. (GBPL) was set up by Shri Nanasaheb Bhosale, who is from Baramati and is an Agriculture Consultant. Under these circumstances, in our opinion, these expenses were incurred under the genuine circumstances. Thus, only grievance of the lower authorities left to be addressed was with regard to availability of requisite

infrastructure of the said company. In this regard, Ld. Counsel drew our attention upon few evidences including bills of lemon grass supplied and evidences of planting of its saplings. The copies of transportation vouchers were also submitted before us to show that all these evidences were brought before the AO evidencing transportation of saplings and other related material. Nothing has been brought on record by the lower authorities to reject these evidences. No further query was raised in this regard by the lower authorities which was left to be addressed by the assessee. We find that the disallowance has been made without bringing any cogent material on record to reject the details and evidences submitted by the assessee. The disallowance cannot be made only on the ground that results of the research were not shown by the assessee during the year under consideration. The benefit of research may or may not yield in the year under consideration. But, that would not determine allowability of the expenses or otherwise. Thus, taking into account totality of facts and circumstances of the case, the action of lower authorities in disallowing these expenses was not justified and therefore, same is reversed and AO is directed to allow the claim of Rs.16,61,674/-

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 9th September, 2016.

Sd/-

(Amit Shukla)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 09/09/2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai