

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & MS SUCHITRA KAMBLE, JM

ITA No.2413/Del/2012
Assessment Year : 2004-05

Meeta Gutgutia,
Prop. M/s Ferns 'N' Petals,
ME-I, M-Block Market,
Greater Kailash Part-I,
New Delhi.

Vs. DCIT,
Central Circle-10,
New Delhi.

PAN : AFDPG2774B

(Appellant)

(Respondent)

Appellant by : Shri Rajesh Jain, CA

Respondent by: Ms Nirupama Kotru, CIT, DR

Date of Hearing : 28.03.2017

Date of Pronouncement: 28.03.2017

ORDER

PER SHRI R.S. SYAL, AM:

This appeal by the assessee is directed against the order passed by the CIT(A) on 14.03.2012 in relation to the Assessment Year 2004-05.

2. It is a recalled matter inasmuch as the earlier *ex parte* order passed by the Tribunal was recalled by its later order dated 15.11.2016.

3. The Id. AR pressed only two grounds, namely, 2 and 3. The remaining grounds, namely, 1, 4 and 5 are, therefore, dismissed as not pressed.

4. Ground no. 2 is against upholding the addition of Rs.2,41,541/- out of total addition of Rs.14,49,246/- made by the Assessing Officer on the basis of Annexure A-5. Succinctly, the assessee is engaged in the business of sale of flowers and related products like bouquet through its various franchisee outlets. A search and seizure operation was conducted on the assessee u/s 132 of the Act on 23.12.2005. Certain incriminating documents were found during the course of search. Annexure A-5 is a bunch of loose papers, which was seized during the course of search. As per pages 14-39 of this Annexure, closing stock as on 31.03.2004 in respect of the premises at Vasant Vihar was worked out at Rs.3,41,491/-. As against this, the declared closing stock was only to the tune of Rs.99,950/-. On being called upon to explain the difference in the two figures, the assessee contended that the valuation of closing stock at Rs.3,41,491/- was done as per Tag price and for the purposes of accounts, the assessee was valuing stock at cost or tag price, whichever is less. The AO did not accept

this explanation. He noted that the difference in two values was found only in respect of Vasant Vihar branch. As the assessee was running six outlets in total, he made an addition of Rs.14,49,246/- taking the same basis of undisclosed closing stock for Vasant Vihar branch. The Id. CIT(A) deleted the addition in respect of other five outlets. He, however, sustained the addition at Rs.2,41,541/-, being the difference between the value of stock as on 31.3.2004 as found during the course of search and as declared for the purposes of income-tax. The assessee is aggrieved against the sustenance of this addition.

5. Having heard the rival submissions and perused the relevant material on record, it is noticed that during the course of search certain loose papers were found indicating value of stock as on 31.03.2004 at Rs.3,41,491/-. Item-wise detail of stock and its value has been placed on record. The assessee sought to explain the difference between the value as disclosed and the value as per the seized material by contending the former to be on cost price and the later on tag price. We have examined the loose papers found during the course of search, which do neither mention nor indicate even remotely that the value given therein was the tag price. The Id. AR failed to

bring on record any evidence worth the name to substantiate his explanation. No purchase vouchers have been produced before us to show that the price given in the list found at the time of search was referring to the purchase price and not the tag price. In the absence of any corroboration of the assessee's stand, we are inclined to uphold the addition made by the Assessing Officer, amounting to Rs.2,41,541/-. This ground is not allowed.

6. The only other ground is against the confirmation of addition of Rs.6,73,077/- out of total addition of Rs.7,10,270/- on *ad hoc* basis. The facts apropos this ground are that the assessee claimed expenses totaling to Rs.74,02,688/-. As the assessee could not produce books of account along with bills/vouchers for verification despite specific opportunities, the Assessing Officer made disallowance at 10% of expenses, which resulted in an addition of Rs.7,10,270/-. The ld. CIT(A) reduced the addition to Rs.6,73,077/- by excluding some items of expenses out of 10% *ad hoc* disallowance, such as, bank charges, commission, depreciation, insurance and audit fees. The assessee is aggrieved against the sustenance of the remaining addition.

7. Having heard both the sides and perused the relevant material on record, it is observed that the assessee did not produce bills/vouchers in support of the expenses claimed to the tune of Rs.71,02,688/-. Under such circumstances, the Assessing Officer was left optionless to examine the genuineness of the expenses claimed. As such, some sort of *ad hoc* disallowance was liable to be made. The Id. CIT(A) in the first appeal, reduced the scope of expenses for making *ad hoc* disallowance. However, we find that the Id. CIT(A) in his order for the immediately preceding assessment year, namely, 2003-04, a copy placed on page 17 onwards of the paper book, has restricted the *ad hoc* disallowance only in respect of advertisement expenses, business promotion, cellular expenses, conveyance, miscellaneous expenses, printing and stationery, repair and maintenance, staff welfare, telephone charges, tour and travelling and vehicle running and maintenance. It has not been brought to our notice that the finding returned by the Id. CIT(A) in restricting the disallowance to this level for the preceding year has been interfered with by the Tribunal. Considering the entirety of the facts and circumstances prevailing before us, we are of the considered opinion that it would be just and fair if the disallowance at 10% is restricted to those items of expenses for which the

ld. CIT(A) sustained disallowance for the assessment year 2003-04 as discussed above. We order accordingly. Consequently, the impugned order is set aside and the matter is sent back to the AO for computing the disallowance of expenses in line with the final decision taken in the appellate proceedings for the immediately preceding year.

8. In the result, the appeal is partly allowed for statistical purposes.

The decision was pronounced in the open court on 28th March, 2017.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.S. SYAL)
ACCOUNTANT MEMBER

Dated: 28th March, 2017.

dk

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi