

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Ramlal Negi (JM)

I.T.A. No. 5282/Mum/2014  
(Assessment Year 2007-08)

Cheminova India Limited Keshava, 7 <sup>th</sup> Floor Bandra Kurla Complex Bandra East Mumbai-400 051.	Vs.	ACIT 10(1) Mumbai.
(Appellant)		(Respondent)

PAN No. AAACL1117E

Assessee by	Shri Rajan R. Vora & Ms. Charul Toprani
Department by	Dr. Darsi Suman Ratnam
Date of Hearing	6.6.2016
Date of Pronouncement	3.8.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 28-03-2014 passed by Ld CIT(A)-10, Mumbai and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision rendered by Ld CIT(A) on the following issues:-

- (a) Disallowance u/s 14A of the Act.
- (b) Disallowance out of bad debts written off.
- (c) Adhoc disallowance out of manufacturing and other expenses.

2. The assessee company is engaged in the manufacture and sale of Organophosphorous insecticides and intermediaries. It is a subsidiary company of Cheminova A/S Denmark, which is ultimately held by Auriga Industries A/S Denmark.

3. The first issue relates to the disallowance made u/s 14A of the Act. During the year under consideration, the assessee had earned dividend income of Rs.60,510/-. The AO applied the provisions of Rule 8D and computed the disallowance at Rs.2,67,781/-. The Ld CIT(A), by following the decision rendered by Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Ltd (328 ITR 81), held that the provisions of Rule 8D shall not be applicable to the year under consideration. Accordingly he held that the disallowance u/s 14A should be worked at 5% of the dividend income. Having held so, he directed the AO to restrict the disallowance to Rs.50,000/-.

4. The Ld A.R submitted that the 5% of dividend income shall work out to about Rs.3,000/- only and not Rs.50,000/- as computed by Ld CIT(A).

5. We heard Ld D.R. We notice that the Ld CIT(A) has restricted the disallowance to 5% of the dividend income. However he has committed an error in working out the disallowance of 5% of the dividend income. Accordingly we modify the order of passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/s 14A to 5% of the dividend income.

6. The next issue urged by the assessee relates to disallowance made out of bad debts claim. The assessee had claimed deduction towards bad debts to the tune of Rs.20,27,182/-. The AO called for details of bad debts. Out of those details, the AO noticed that the assessee has continued to have business transactions with a debtor named M/s Pandesara Industries Ltd against whom the assessee had claimed bad debts of Rs.55,000/-. Hence the AO took the view that the assessee has failed to establish that the above said debt has become bad and accordingly disallowed the claim of Rs.55,000/-. The Ld CIT(A) also confirmed the same.

7. The Ld A.R submitted that the assessee has committed an error in giving the details of transactions with M/s Pandesara Industries Ltd. The Ld A.R submitted that the date of invoice was 27-01-2004, but the assessee inadvertently mentioned the date as 27-01-2007. Hence the AO has drawn conclusion that the assessee was having business dealings with the above said party and accordingly disallowed the bad debts claim. The Ld A.R submitted that this fact, along with copy of relevant invoice, was furnished to Ld CIT(A), but the first appellate authority chose to confirm the addition. He further submitted that the decision of TRF Ltd (323 ITR 397) rendered by Hon'ble Supreme Court shall apply to the facts of the instant case. He further submitted that the Circular No.12 of 2016 issued by CBDT has also states that the writing off of debt is sufficient to claim deduction u/s 36(1)(vii) of the Act.

8. We have heard Ld D.R and perused the record. The assessee has submitted that there was inadvertent error in mentioning the date of invoice. Further, the debt has actually been written off. In view of the Circular issued by CBDT, wherein the decision rendered by Hon'ble Supreme Court in the case of TRF Ltd (supra) has been followed, there is no justification in disallowing the sum of Rs.55,000/- actually written off. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this disallowance.

9. The next issue urged by the assessee relates to the adhoc disallowance of Rs.2.00 crores made out of manufacturing and other expenses. The AO noticed that the sales revenue of the assessee has fallen from Rs.247.89 crores to Rs.246.16 crores on year to year basis. However, the manufacturing expenses has gone up from 223.04 crores to Rs.233.21 crores during the corresponding period. The interest expense has also increased from Rs.4.13 crores to Rs.5.31 crores.

10. The assessee explained that there was a change in the composition of the business, i.e., there was reduction in sale of manufactured goods while there was increase in sale of trading goods. It was further submitted that the fixed over head expenses have increased by Rs.10 crores which are in line with cost inflation index. It was also submitted that the discount offered to its customers has also increased due to market competition. With regard to the increase in interest expenditure, it was submitted that there was actually decrease in interest and finance charges by Rs.0.74 crores. Further, there was increase in cash discount of Rs.1.21 crores and there was decrease in the interest income by Rs.0.70 crores.

11. However, the AO held that the assessee has not furnished any proper evidence to support the explanations given. Accordingly he made ad-hoc disallowance of Rs.2.00 crore for want of evidences and added the same to the total income.

12. Before Ld CIT(A), the assessee filed detailed explanations and hence the Ld CIT(A) called for a remand report from the AO. In the remand report, the AO reported that the assessee has only furnished ledger account copies and sample copies of bills in support of expenses, i.e., the assessee has not furnished entire bills for verification. Accordingly he recommended that the addition of Rs.2.00 crores should be sustained. Accordingly, the Ld CIT(A) took the view that the assessee has failed to furnish evidences as required by the AO to his satisfaction and accordingly, the assessee has failed to prove the expenses in terms of requirements of sec. 37(1) of the Act. Accordingly he confirmed the disallowance of Rs.2.00 crores made by the AO.

13. The Ld A.R submitted that the vouchers and evidences relating to manufacturing and other expenses run into many volumes and hence the

assessee first furnished justification for drop in profit/increase in expenses. During the course of remand proceedings, ledger account copies of all expenses and sample copies of bills in support of the expenses running into about 20 volumes were furnished to the AO. In the remand proceedings, the AO did not find fault with the details furnished by the assessee. Further the AO did not call for any other details also. However, the assessing officer, even after carrying out verification of the details furnished by the assessee issued a remand report in support of the addition, after expiry of considerable period of 2 years. He submitted that the copies of those 20 volumes of evidences have been furnished before the Tribunal also. He submitted that the evidences available with the assessee runs into several volumes and hence it would be practically difficult to bring all the evidences to the office of the AO. He submitted that the assessee would have arranged for bringing the entire volume of evidences, had the AO insisted upon the same. As stated earlier, the assessee was under bonafide belief that the AO was satisfied with the sample copies of invoices and vouchers. The Ld A.R also invited our attention to the analysis of various expenses furnished by him along with the written submissions.

14. On the contrary, the Ld D.R supported the order passed by Ld CIT(A). He submitted that the assessee did not produce all the evidences during the course of remand proceedings also.

15. We have heard the rival submissions on this issue and perused the record. We notice that the assessing officer has made ad-hoc disallowance out of manufacturing and other expenses on the reasoning that the assessee did not furnish all the evidences in support of their claim. At the time of hearing, the Ld A.R submitted that the assessee has furnished ledger account copies of all the expenses along with sample copies of invoices and vouchers in about 20 volumes of spiral binding. He further submitted that the assessing officer,

during the course of remand proceedings, has examined those evidences and did not ask for any further details. The Ld A.R also submitted that the evidences in support of expenses run into several volumes and if the AO had insisted on production of entire evidences, the assessee would have made arrangements to transport all of them to the office of the AO.

16. In our view, there is merit in the submissions so made by the Ld A.R. In case of companies, which are having large volume of transactions, it would be practically difficult to bring all the evidences in one go. Hence the ledger account copies are furnished to the tax authorities and normally they are verified on a test check basis. In the instant case, the assessee has furnished copies of invoices and vouchers on a sample basis and it is stated that the assessing officer did not find any defects therein after carrying out examination.

17. We further notice that the assessee has furnished the reasons for the fall in turnover and increase in manufacturing expenses. The sales relating to manufactured products have fallen from Rs.233.74 crores to Rs.210.65 crores, whereas the sales relating to traded goods have gone up from Rs.14.15 crores to Rs.35.51 crores. The assessee has stated that the change in the sales product mix coupled with the inflationary increase of prices and expenses have contributed to the increase in manufacturing expenses. When we look at this analysis furnished by the assessee, we do not find any infirmity in it. We notice that the AO has also not commented adversely on this analysis.

18. The next major increase is in the Employee Cost to the tune of Rs.1.15 crores. It is stated that this cost is an item of fixed cost and the increase in this expenditure is due to annual salary increase. This explanation of the assessee also, in our view, sounds reasonable.

19. The next major increase is seen in Sales promotion expenses and Discount & Commission given on sales. The Ld A.R submitted that there was stress on the demand of the products manufactured by the assessee during the year under consideration and hence the assessee was constrained to offer discounts and higher commission in order to maintain its sales trend. He submitted that the cash discounts were offered to the customers for early payment of the dues and it has been accounted by issuing credit notes to the customers. If the customer makes payment in advance, then the cash discount was deducted from the prices and the same was shown in the invoices itself. Because of these measures, the collections from debtors have increased by Rs.57.51 crores. Besides the above, the assessee has also offered Sales promotion discount schemes and further given special discounts to OEMs. The annual increase on account of these promotional schemes was Rs.2.86 crores. It was stated that all these expenses have been passed through the ledger account of concerned customers. In respect of other expenses, it was stated that the general increase in those expenses are comparable with the normal inflationary trend. In respect of interest expenditure, the assessee has furnished reasons for variation and all of them are related to the concerned loan accounts.

20. It was further stated that the margin in traded goods was lower vis-à-vis the manufactured goods. Thus, we notice that the assessee has offered plausible explanations with regard to the fall in turnover, fall in profit and increase in expenditure. We notice that the AO did not examine these explanations and also the analysis made by the assessee. We have already noticed that the assessee has furnished evidences in the form samples and the AO did not find fault with them. In our view, any deficiency noticed in the samples given would normally trigger further investigation. According to the assessee, the AO did not find any defect and further, did not ask for furnishing

of further evidences. These discussions show that the assessee was willing to co-operate fully with the assessing officer and could not furnish all the volumes of invoices/vouchers due to practical difficulty only. Under these set of facts, in our view, there is no justification in finding fault with the assessee.

21. Further, we notice that the assessing officer has made disallowance of Rs.2.00 crore on ad-hoc basis. In our view, the assessee has furnished proper explanations through various types of analysis of financial statements and also furnished reasoning for the variation. In our view, those explanations are reasonable and justifiable. As noticed earlier the AO did not find fault with those explanations and also with the sample copies of invoices/vouchers.

22. In view of the foregoing discussions, we are of the view that there is no justification in making disallowance out of various expenses on ad-hoc basis, when the AO has not found fault or deficiency in any of the items of expenditure. Accordingly, we set aside the order passed by the Ld CIT(A) on this issue and direct the AO to delete the ad-hoc disallowance of Rs.2.00 crores.

23. In the result the appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 3.8.2016

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 3/8/2016

Copy of the Order forwarded to :

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

6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS