

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 940/JP/16

निर्धारण वर्ष/ Assessment Year : 2012-13

The ACIT, Circle-1, Kota	बनाम Vs.	M/s Shiv Edibles limited 237-A, Talwandi, Kota
स्थायी लेखा सं./जीआईआर सं./PAN No. AAICS0274 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gagieya (CA)

राजस्व की ओर से / Revenue by : Shri Prithviraj Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 20.02.2017

घोषणा की तारीख / Date of Pronouncement : 21/02/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Kota dated 16.08.2016 for A.Y. 2012-13. In its appeal, the Revenue has taken following grounds of appeal:

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

(i) restricting the disallowance out of Fuel expenses to Rs. 10 Lacs.

(ii) restricting the disallowance out of Hammali expenses to Rs. 1 lac.

- (iii) Deleting the addition of Rs. 37,172/- made by disallowing Loading Vehicle expenses.*
- (iv) deleting addition of Rs. 5,64,138/- made u/s 36(1)(va) on account of late payment of employees contribution towards PF."*

2. In respect of the first ground of appeal, briefly the facts of the case are that the amount of Rs. 7,61,17,236/- under the head fuel (coal and mustard husk), the assessee was asked to produce the relevant supporting documentation by the AO. The AO observed that the assessee has kept only a register in which receipt of mustard husk is being entered and there are no signatures of the sellers on the revenue stamp affixed against their names in the purchase register. The vouchers maintained by the assessee are internal vouchers and not supported with the vouchers of the sellers and the payments have been made in cash to the local farmers who do not have any bank accounts. In absence of complete particulars of the sellers as well as non-availability of the relevant vouchers, expenses debited are not fully verifiable and following the Hon'ble Andhra Pradesh High Court's decision in case of Transport corporation of India (256 ITR 701), 5% of the expenses amounting to Rs.38,05,861/- were disallowed by the AO holding the same as unverifiable.

2.1 Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and submitted that it has maintained all the details and vouchers in respect of husk purchased and purchase register of husk has been produced for verification before the AO. Further complete details of the local farmers from whom the Husk has been purchased in terms of name of farmers, quantity purchased, weighment slip and mode of payment has been maintained and submitted to the AO. It was submitted that AO has not pointed out any specific defect or any instance of irregularity in the purchase

of Husk. It was further submitted that the decision of Hon'ble AP High court in case of Transport Corporation of India is distinguishable on facts and not applicable in the case of the assessee. In that case, the assessee had claimed deduction of secret commission paid to unspecified employees of its customer to garner more business and the commission payments was held not verifiable in view of the assessee failing to furnish name and address of the recipients.

2.2 The Id. CIT(A) after considering the assessee's submission and AO's findings restricted the disallowance to Rs. 10 lacs and his observations are as under:

"In the assessee's own case for the preceding year in appeal No. 84/14-15, I have decided the issue partly in favour of the assessee. Following the same line of decision, I hold that the AO's estimation for the disallowance is not backed by either any logical reasoning or comparable cases. On the other hand, the assessee has submitted details like weighment slips of the husk quantity, details of the farmers etc. However, there was no denial that the mode of payment was cash and that certain number of vouchers remained unsigned by the recipients of the cash amounts. In the totality of facts and considering that there could be a possibility of certain purchases not being properly supported with the required additional evidences, the disallowance made by the AO is restricted to Rs. 10 lacs. The balance disallowance of Rs. 28,05,861/- is accordingly directed to be deleted."

2.3 During the course of hearing, the Id. AR reiterated the submissions made before the Id. CIT(A) and submitted that the assessee has maintained complete details of the fuel consumption including husk and also the name of the farmers, quantity purchased, weighment slip and mode of payment were duly

submitted to the AO including the quantitative purchase register and the facts are identical as in A.Y. 2011-12 . It was further submitted that the AO had merely proceeded on suspicion and could not pointed out any specific defect. It was further submitted that the percentage of husk consumed with respect to turnover is comparable to last year wherein husk consumed this year was 2.006% as against 2.073% last year.

2.4 The Ld. DR is heard who has relied on the order of the AO.

2.5 We have heard the rival contentions and perused the material available on record. The AO has disallowed 5% of the expenses holding the same as not verifiable. As per Ld. CIT(A) rightly held that the AO on estimation of 5% disallowance is not back by any logical reasoning or comparable cases. The Id. CIT(A) has also given a findings that the assessee has maintained and submitted the details of the husk purychaed during the year in terms of weighment slip details of farmers etc. At the same time given that certain purchases are not being properly supported with the required additional evidences he restricted the disallowance to Rs. 10,00,000/- being 26% of the total disallowance made by the AO. Similar disallowances have been made in the A.Y. 2011-12 where by following the same reasoning, AO has disallowed 5% of the expenses which were restricted to Rs. 7 lacs by the Id. CIT(A)and the revenue is apparently not in appeal against the said order of the Ld. CIT(A) and the same has attained finality. In the facts and circumstances of the case given that the addition have been made purely on adhoc basis. At the same time given the fact that some of the expenses are not supported by proper evidences. The Ld. CIT(A) has restricted the disallowance to a reasonable level. We do not see any infirmity in the order of the Ld. CIT(A) which is hereby confirmed. In the result the ground taken by the revenue is dismissed.

3. Coming to the second ground of appeal the AO has disallowed 5% of the Hammali expenses amounting to Rs. 3,56,326/- following the same reason as done in case of disallowance of fuel husk expenses as discussed above. The AO stated that this Hammali expenses are mostly supported were internal vouchers and the same cannot be considered as evidence in support of such expenses.

3.1 Being aggrieved the assessee carried the matter in appeal before the Id. CIT(A) and submitted that the assessee has maintained all vouchers in respect of the payment made on account of Hammali expenses.

3.2 The Id. CIT(A) after considering the assessee's submission has partly allowed the assessee's claim and restricted the disallowance to Rs. 1 lac out of Rs. 3,56,326/- disallowed by the A.O. The relevant findings of the Ld. CIT(A) is as under:

As I have pointed out in discussion related to ground No.1 above, the AO has resorted to making the addition based on case law of Transport Corporation of India (256 ITR 701) but the facts of the above cited case are not applicable in the case of the assessee since the above case law deals with payment of secret commission considered as illegal payments in that case. In the assessee's own case for the preceding year in appeal No. 84/14-15, I have decided the issue partly in favour of the assessee. It is seen that no independent verification was carried out by the AO to justify his action. He just arrived at some adhoc conclusion and based his disallowance on a case law with dissimilar facts involved. If he were to follow this logic, why he accepted 95% of the said expenses and disallowed only 5% is the question that remains unanswered in the Assessment order. Under the circumstances, the AO's estimation is not backed by either any logical reasoning or factual verification.

At the same time the assessee's maintenance of expense details was also not found to be fully satisfactory.

In a totality of facts and considering that there could be possibility of certain expenses in this head not being properly supported with the required additional evidences, the disallowance made by the AO is restricted to Rs. 1 lac. The balance amount of Rs. 2,56,326/- is directed to be deleted. This ground of appeal is treated as partly allowed.

3.3 During the course of hearing the Id. AR reiterated its submission made before the Ld. CIT(A) and submitted that percentage of Hammali expenses with respect to the turnover this year is 0.188% which is comparable to the percentage of last year at 0.193% in A.Y. 2011-12.

3.4 The Id. DR is hear who has relied on the order of the A.O.

3.5 We have heard the rival contentions and perused the material available on record. We have gone through the order of the Id. CIT(A) given that the addition has been made against on purely adhoc basis without highlighting as a specific defect in the claim of the case, we do not see any infirmity in the order of Ld. CIT(A) who has restricted a disallowance to Rs. 1 lac. Hence we hereby confirmed the order of the Ld. CIT(A).

4. In ground No.3 the AO has disallowed 5% of the loading vehicle expenses amounting to Rs. 37,172/-. The Id. CIT(A) has deleted the said addition following his order for A.Y. 2011-12 which is not in appeal by the Revenue, we accordingly do not see any infirmity in the findings of the Id. CIT(A) which is reproduced as under:

As I have pointed out in discussion, related to Ground No.1 above, the AO has resorted to making addition based on the case law of Transport Corporation of

India but the facts of the above said case are not applicable in the case of the assessee since the above case law deals with payment of secret commission considered as illegal payments in that case. In the preceding year, in the assessee's own case in appeal No. 84/14-15, I have decided the same in favour of the assessee. Since it is seen that no independent verification was carried out by the AO to justify his action and his estimation is not backed by either any logical reasoning or factual verifications, the addition of the amount of Rs. 37,172/- is accordingly directed to be deleted. This ground of appeal is treated as allowed.

5. Regarding ground No.4 wherein the revenue has challenged in deleting the addition of Rs. 5,64,138/- made u/s 36(1)(va) on account of late payment of employees contribution to P.F.

5.1 The decision of Hon'ble Rajasthan High court in the case of CIT vs. Udaipur Dugdh Udpadak Sahkari Sangh Ltd. (366 ITR 163) has held that since the assessee has paid employees contribution towards PF before the due date of filing of the return the same is allowable u/s 43B of the IT Act. The Hon'ble High Court has held in its decision that whether employee and employees contribution are paid before the due date of filing of the return of income u/s 133(9) no disallowance can be made u/s 43B or u/s 36(1)(va). In the instant case it is not in dispute that the subject payments have been made before 30.09.2012 being the due date of filing of the return of income u/a 139 of the Act. In the result respectfully following the decision of Hon'ble Rajasthan High Court we confirm the order of the Id. CIT(A) and the ground taken by the revenue is dismissed.

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

Order pronounced in the open court on 21/02/2017.

Sd/-
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 21/02/2017

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

1. अपीलार्थी / The Appellant- The ACIT, Circle-1, Kota
2. प्रत्यर्थी / The Respondent- M/s shiv Edibles Ltd. Kota
3. आयकर आयुक्त / CIT , Kota
4. आयकर आयुक्त(अपील) / The CIT(A) Kota
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 940/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.