

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. 367/JP/17
निर्धारण वर्ष/Assessment Year : 2013-14

M/s Agribiotech Industries Pvt. Ltd., SP-825, Road No. 14, VKI Area, Jaipur.	बनाम Vs.	The ACIT, Circle-4 Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No.: AAFCA1695R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : Shri Himanshu Goyal (C.A.)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 14/09/2017
घोषणा की तारीख / Date of Pronouncement: 15/09/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A), Ajmer dated 09.03.2017 for A.Y. 2013-14.

2. The grounds No. 1 and 2 are general in nature which does not require any separate adjudication, hence the same are dismissed.

3. In ground No. 3, the assessee has challenged the confirmation of addition of Rs. 20,14,362/- made by the AO on account of travelling expenses. In this regard the facts of the case, the submissions of the assessee and the findings of the AO are as under:-

"4. Disallowance out of travelling expenses:

During assessment proceedings it was found that the assessee has debited a sum of Rs. 70,30,911/- in P&L account under the head travelling expenses. Out of this, an amount of Rs. 20,14,362/- was incurred on Director's foreign travelling expenses. Vide note sheet entry dated 20.10.2015 the assessee was asked to explain as to why entire foreign travelling expenses of directors shall not be disallowed as there was no link between foreign travelling by the directors and business of the assessee. The assessee filed written submission stating therein that-

"During the year under consideration the assessee incurred an amount of Rs. 13,29,639/- on account of Foreign Travel of its directors. The assessee is growing company and require latest techniques and methodologies to increase its turnover, efficiency and quality of product, the Directors of the company visit other countries to explore business opportunities and accordingly implement the same in the business line of the assessee. It cannot be said that there is no link between the foreign travel and the business of the assessee at the growth of business is a continuous process and though every transaction may not lead to any specific benefit to the assessee but it has a great impact in future. A business man works with a long term perspective and incurs expenditure accordingly. It is for the board of directors to decide what expenditure will best suit the business of an assessee company. In this case the trip has been approved by the board of the company. It is further important to mention that the assessee is a limited company and has a separate legal entity which is totally different from that of its directors. Any expenditure incurred by the assessee may not be considered for its personal purpose.

There are various judicial pronouncement in which it is held that foreign travel expenses incurred to explore new business opportunities, are eligible as 'revenue' in nature.

-CIT vs. Muchem 208 Taxman 250 (mag.) (P&H) (high court)

-Honorable High Court of Delhi in Rev. Pet. No. 668 of 2011 in ITA No. 157 of 2011 pronounced on: 1st June, 2012 in the case of Rahuljee & Company Pvt. Ltd. Versus Income Tax Appellate Tribunals & others

- Supreme Court in S.A. Builders Vs. CIT(Appeals) (SC), [288ITR 2]

-Sayaji Iron & Engg. Co. Ltd. vs. CIT 253 ITR 749”.

4.1 I have considered the reply of the assessee. The expenses are allowable only when the same are for wholly and exclusively for business purpose. If the directors visited abroad for business purpose than the business VISA was must. But it was found that the Directors of the company visited UAE, Maritius and Maldives on tourist Visa. Even the assessee failed to submit any proof of meting abroad or any project report/business report submitted by the directors. Further ongoing through the details furnished by the assessee it is evident that Smt. Pooja Bajoria also visited abroad with Sh. Ashutosh Bajoria. Mrs. Pooja Bajoria is not director in assessee company. The assessee company not produced any evidence which proves that the directors’ visit was to explore the business activities.

4.2 Reliance is placed on the decision of Hon’ble High Court of Karnataka in the case of Commissioner of Income-tax, Bangalore Vs. HMA Data, Systems (p) Ltd. [2015] 63 taxmann.com 144, where it was held by the Hon’ble High Court that expenditure related to travelling abroad by Company’s MD and his wife is not an allowable expense when assessee could not substantiate said claim by producing cogent evidence-assessee did not furnish details like business visa, name of person at whose invitation business trip was held, proof of any meeting abroad and details alike.

In this case also the assessee failed to produce details of business visa, name of person at whose invitation business trip was held, proof of any meeting abroad, any report submitted to company, further except tickets, no other expense details have been furnished by the asessee.

4.3 Therefore I hereby disallowed entire directors foreign travelling expenses of Rs. 20,14,362/-. Thus Rs. 20,14,362/- is added to the total income of assessee.”

4. In respect of ground no. 4, the assessee has challenged the addition of Rs. 77,000/- made by the AO on account of advertisement and publication expenses and in ground No. 5, the assessee has challenged the addition of

Rs. 3,07,887/- made by the AO on account of sale promotion expenses . In this regard, the facts, submissions of the assessee and the relevant findings of the AO are as under:-

"Disallowance out of expenses (Advertisement and Sales Promotion):

On verification the books of accounts of the assessee it is found that that the assessee has debited Rs. 8,85,073/- under the head business promotion & distribution expenses. Out of his, Rs. 2,69,298/- were incurred on advertisement & publishing expenses and remaining amount of Rs. 6,15,775/- were incurred on sales promotion expenses. Vide order sheet entry date 20.10.2015 the assessee was asked to explain as to why disallowances shall not be made as the expenses of advertisement & publicity are on account of advertisement in souvenir to some extent and expenses on account of sales and promotion are mainly on account of hotel & restaurant bills of directors and purchases from various store, gifts and sweets to govt. official. The assessee filed written submission stating therein that:

"Expenditure incurred on account of advertisement and publishing Expenses:

Your honor the assessee has incurred an amount of Rs. 2,69,298/- under the head advertisement and publishing expenses during the year under consideration. The said expenditure has been wholly and exclusively incurred for the business of the assessee company. A copy of ledger account has already been filed before you. A perusal of the same will reveal that out of the total expenditure an amount of Rs. 131357/- has been incurred on advertisement made in news paper (copy enclosed) for inviting tenders of transport service providers to the transport the goods of the company, an amount of Rs. 60,941/- has been incurred towards publishing an advertisement in news paper (copy enclosed) for recruiting Manager of boiler and turbine operations, as regards the balance expenditure the same has been incurred in the interest of the business of the assessee company to maintain its presence in the market among various stakeholders. Thus

the complete expenditure has been incurred for the business of the assessee company and hence allowable."

"Expenditure incurred on account Sale Promotion Expenses

Your honor during the year under consideration the assessee has incurred an amount of Rs. 6,15,775/- on account of sales promotion expenses. Looking to the total sales made by the assessee the expenditure incurred under this head is meager. The said expenditure has been incurred wholly and exclusively for the business of the assessee company. A copy of the ledger account of sales promotion expenses has already been filed before your honor. A perusal of the same will reveal that all expenses are related of the business of the assessee. The expenses incurred on hotels, stay restaurants, purchases of sweets, gifts etc. either through credit cards/directly have been incurred for the purpose of the business of the assessee to take care of various stakeholders and to meet out the needs of the business. The assessee company has a separate legal entity and no expenditure can be considered being personal in nature.

Your honor in this regard your attention is drawn to the judgment delivered in the case of Sayaji Iron & Engg. Co. Ltd. vs. CIT 253 ITR 749 wherein it was held that for the purpose of a company no expenditure shall be deemed to be in the nature of personal expenditure as the company is a separate legal entity."

5.1 I have considered the reply of the assessee and not found fully convincing. The assessee contention that expenditure of Rs. 1,31,357/- and 60,941/- were incurred for advertisement in news paper is acceptable. But as far as remaining amount of Rs. 77,000/- is concerned, the contention is not acceptable as the remaining expenditure of Rs. 77,000/- has incurred for advertisement in souvenir and not allowable. Thus amount of Rs. 77,000/- is disallowed and added back to total back to total income of the assessee.

5.2 As far as sales promotion expenses are concerned the reply of the assessee is not fully convincing. Since the expenditure are mainly on account of Hotel & restaurant bills of directors and purchases from various stores, gifts & sweets then how the same are incidental to

business. Therefore I disallowed 50% of these expenses and accordingly an addition of Rs. 3,07,887/- (50% of 615775) is made to total income of the assessee.

5.3 Thus total addition of Rs. 3,84,887/- (77,000+307887) is made on account of disallowance of expenses and added to total income of the assessee."

5. The Id. CIT(A) after considering the submission of the assessee has found the disallowances made by the AO as reasonable and fair and confirmed the addition so made by the AO.

6. Now the assessee is in appeal before us and the Id AR reiterated the submissions made before the lower authorities. Regarding travel expenses, the Id. AR submitted that the assessee being a private limited company, there is no basis for AO to hold that the assessee has incurred any personal expenses in relation to foreign travel of its directors and in support, reliance was placed on the decision of Hon'ble Gujarat High Court in the case of Sayaji Iron & Engg. Co. Ltd.(supra).

7. Per contra, the Id. DR took us through the findings of the Assessing Officer and submitted that no evidences have been submitted by the assessee in support of the foreign travel expenditure and whether such foreign travel is in connection with assessee's business or not. It was further submitted that Smt. Pooja Bajoria also visited along with Shri Ashutosh Bajoria and her expenses have also been claimed by the assessee even though she is not the Director in the assessee company. In his rejoinder, the Id. AR submitted that the expenses on the foreign travel have been incurred to explore new business opportunities and the assessee can demonstrate the same if so required through production of evidences in support thereof. Regarding other disallowances, the Id DR supported the order of the lower authorities and the Id AR reiterated its submissions made earlier before the lower authorities.

8. We have heard the rival contentions and perused the material available on record. Regarding foreign travel expenses, the onus is on the assessee to demonstrate through verifiable and credible evidence that the travel expenditure on foreign trips has been incurred for the purposes of the assessee's business. The matter is accordingly remitted back to the file of the Assessing officer to examine the same afresh as per law after providing appropriate opportunity to the assessee.

9. Regarding sales promotion expenses of Rs 307,887, the AO has disallowed 50% of the total expenses holding that the assessee has not fully justified the incurrance of such expenditure as incidental to business going by the narration of the expenditure in terms of hotel bills, gifts and sweets. In our view, if the AO has any apprehension that the expenditure has not been incurred for the purposes of business, he should specify the particular transaction/expenditure and in case, there are repeat transaction/expenditure of similar nature, the AO has to give a specific finding as to why he feels that the expenditure has not been incurred for business purposes. Similarly, no basis has been given by the AO for disallowance of advertisement expenditure of Rs 77,000 towards advertisement in souvenir. The matter is accordingly remitted back to the file of the Assessing officer to examine the same afresh as per law and give a specific finding after providing appropriate opportunity to the assessee. The ground no. 3, 4 & 5 are thus allowed for statistical purposes.

10. In ground No. 6, the assessee has challenged the addition of Rs. 4,42,192/- on account of interest income. In this regard, the Id AR submitted that the said income was received in subsequent assessment year 2014-15 and has already been offered to tax and where the same is brought to tax in

the instant year, it will lead to double taxation. Per contra, the Id. DR submitted that the assessee is following mercantile system of accounting hence, the interest income has accrued during the year and has rightly been brought to tax by the Assessing Officer and which has been confirmed by the Id. CIT(A).

11. The relevant finding of the Id. CIT(A) is reproduced as under:-

"7.3 I have gone through the assessment order, statement of facts, ground of appeal and written submission carefully. It is seen that the interest of Rs. 4,42,192/- has accrued in the F.Y. 2012-13 relevant to A.Y. 2013-14 and the appellant is following mercantile system of account. Therefore, I am of the considered view that the income of Rs. 4,42,192/- is required to be taxed in the A.Y. 2013-14. The assessee has no liberty to declare the income of the A.Y. 2013-14 in the A.Y. 2014-15. Therefore, the addition of Rs. 4,42,192/- made by the AO is hereby confirmed."

12. After hearing both the parties, we are of the view that there is no dispute that the interest income accrues to the assessee during the year under consideration and as per the accrual method of accounting, the same should have been offered to tax in the instant year. Accordingly, we do not see any infirmity in the action of Id. CIT(A) in confirming the action of the AO in bringing the said interest to tax in the instant year. At the same time, given the fact that the said income has already offered to tax in the subsequent year, the assessee shall be at liberty, if so advised, to revise its return of income or make an appropriate application before the Assessing Officer stating that the income has already brought to tax in the instant year and the same cannot be brought to tax in the subsequent year and the AO shall examine the same as per law. The ground of appeal is disposed off accordingly.

The appeal of the assessee is disposed off with above directions.

Order pronounced in the open court on 15/09/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 15/09/2017

*Santosh

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

1. अपीलार्थी / The Appellant- M/s Agribiotech Industries Pvt. Ltd., SP-825, Road No. 14, VKI Area, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT,
6. गार्ड फाईल / Guard File (ITA No. 367/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.