

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 5210/Del /2014
Assessment Year: 2011-12

ABC Leathers, B-65, Mayapuri Indl. Area, Phase-I, New Delhi-64 (PAN: AAFA4258Q)	vs	ACIT, Circle-27(1), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri K.V.S.R. Krishna, CA
Respondent by : Shri Atiq Ahmad, Sr. DR

Date of Hearing : 06.09.2017
Date of Pronouncement: 31.10.2017

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) – XXIV, New Delhi for Assessment Year 2011 – 12 wherein, vide order dated 21st of August 2014, the assessee's appeal was partly allowed.

2. The facts of the case are that the return of income was filed declaring nil income after claiming brought forward losses set off

to the tune of Rs. 1,06,90,690/-. The case was later selected for scrutiny and the assessment was completed under section 143 (3) of the Income Tax Act, 1961 after making disallowances/additions to the following heads of expenditure –

-Communication expenses – disallowance at the rate of 20% of total expenditure – disallowance amounting to Rs. 1,71,978/-

-Vehicle expenses and depreciation – disallowance at the rate of 20% of expenditure – disallowance amounting to Rs. 3,28,937/-

-Shortage and excess – disallowance at the rate of hundred percent – disallowance amounting to Rs. 20,906/-

_ Business promotion expenses, debate and discount – disallowance at the rate of 20% of expenditure – disallowance amounting to Rs. 3,51,943/-

2.1 The total income was computed at rupees 1,13,39,586/- and after allowing the brought forward losses of earlier years of rupees 1,13,39,586/-, the assessment was completed at nil income.

2.2 Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority who confirmed the disallowance

pertaining to communication expenses and shortage and excess but gave relief by directing deletion of addition pertaining to disallowance at the rate of 20% of depreciation on car. The Ld. CIT (Appeals), however, confirmed the disallowance pertaining to vehicle running expenses. The Ld. CIT (Appeals) also directed the deletion of addition of Rs. 3,51,943/- made on account of business promotion expenses and rebate and discount.

2.3 Now the assessee has approached the ITAT and has challenged the sustenance of various disallowances by the Ld. CIT (Appeals) by raising the following grounds of appeal –

“1. That on the facts and the circumstances of the case, the learned CIT (A) has grossly erred in confirming the following aggregate disallowance of Rs. 4,78,199/- out of total disallowance of Rs.8,73,763/- , which were made by the learned AO on arbitrary basis,unjustified and against law:

(i)	<i>Communication Exp. @20%</i>	<i>Rs.1,71,978/-</i>
(ii)	<i>Vehicle running & maintenance Car depreciation etc.@20%</i>	<i>Rs.3,28,936/-</i>
(iii)	<i>Short & Excess @ 100%</i>	<i>Rs. 20,906/-</i>
(iv)	<i>Business promotion/ Diwali Expenditure. & Staff Welfare @20%</i>	<i>Rs. 3,51,943/-</i>
	<i>Total</i>	<i>Rs.8,73,763/-</i>

2. That the Ld. Assessing Officer has assessed total income at Rs. 1,13,39,586/- as per his assessment order, but wrongly adjusted an amount of Rs. 1,15,64,453/- against brought forward

loss of earlier years in his Income Tax Computation Form. Thus the Assessing Officer has erred in adjusting excess amount by Rs. 2,24,867/- against brought forward losses of earlier years.

3. Appellant craves to add, file and modify any other ground before or at the time of hearing of appeal.”

3. The Ld. Authorised Representative submitted that the disallowances at the rate of 20% from telephone expenses, vehicle running and maintenance expenses and shortage and excess was arbitrary and unjustified as these disallowances had been made on an *ad hoc* basis and were made without pointing out any specific defects in the books of accounts of the assessee. It was submitted that the accounts of the assessee were duly audited and all the relevant details had been furnished both before the assessing officer as well as the first appellate authority. It was also submitted that no disallowances had been made in assessment years 2009 – 10, 2010 – 11 and 2012 – 13 and, therefore, even on the principle of consistency, such disallowances were unwarranted. It was submitted that the additions sustained by the Ld. CIT (Appeals) be deleted.

4. In response, the Ld. Senior Departmental Representative submitted that as far as the telephone/ communication expenses were concerned, personal element could not be ruled out and

part of such expenses may not be fully attributable to the business of the assessee and, therefore, disallowance on this account was justified. On the issue of disallowance of vehicle expenses, it was submitted that the AO has given a finding that the assessee had not maintained any logbook showing the use of car and, therefore, it could not be said that the entire expenses had been incurred wholly and exclusively for the purpose of business of the assessee and the use of vehicle for personal purposes could not be ruled out and, accordingly, even this disallowance was justified. On the disallowances relating to shortage and excess it was submitted that the assessee had failed to substantiate the amounts which had been debited as short and excess and, accordingly, the same was correctly disallowed. It was submitted that the disallowances sustained by the Ld. CIT (Appeals) be sustained.

5. We have heard the rival submissions and have perused the material on record. It is undisputed that the assessee's books of accounts have been duly audited and the assessee has also filed voluminous details of the various expenses under which the impugned disallowances have been made. The perusal of the details with respect to telephone, trunk and telex charges shows

that most of the payments, although, have been made by cheques, there are instances where payments have been made in cash or have been reimbursed in cash. Further, although these expenses have been duly supported by bills and vouchers, the plea of the assessee that the entire expenses relate to business purposes cannot be accepted in totality. However, looking into the facts and circumstances of the case we are of the considered opinion that interest of Justice would be met if such disallowance is restricted to 10% of the total expenses booked under communication expenses. Accordingly, the AO is directed to restrict the disallowance to 10% of the total communication expenses.

5.1 Similarly, personal element in expenditure incurred on vehicle running and maintenance cannot be ruled out completely as it is an admitted fact that no logbook has been maintained and the purpose for which payments had been made towards taxi hiring charges is not discernible from that details filed in this regard. Therefore, in respect of vehicle running expenses also, it is our considered opinion that interest of Justice would be met if the disallowance in respect thereof is restricted to 10% of the total expenses under the said head. Accordingly, the AO is

directed to restrict the disallowance to 10% of the total vehicle running and maintenance expenses.

5.2 As far as the issue of disallowance of shortage and excess is concerned, both the lower authorities have held that no details had been filed in this regard. Although the assessee has provided voluminous details in the paper book filed before us, the same needs to be verified by the lower authorities. Therefore, it is our considered opinion that this issue needs to be restored to the file of the AO for fresh adjudication. Accordingly, the issue of shortage and excess is restored to the file of the AO for examining the issue afresh after giving proper opportunity to the assessee to present the relevant details and explanations.

6. In the final result, the assessee's appeal stands partly allowed.

The order is pronounced in the open court on 31.10.2017.

Sd/-

(G.D. AGRAWAL)
PRESIDENT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31st October, 2017
'GS'

Copy forwarded to:

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

TRUE COPY

By Order

ASSISTANT REGISTRAR