

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)

I.T.A. No. 3582/Mum/2015 (Assessment Year 2006-07)
I.T.A. No. 3583/Mum/2015 (Assessment Year 2007-08)
I.T.A. No. 3584/Mum/2015 (Assessment Year 2009-10)
I.T.A. No. 3585/Mum/2015 (Assessment Year 2010-11)

DCIT CC 4(3) Central Range 4 Mumbai	Vs.	M/s. Avon Corporation Ltd. C/o. Official Liquidator Attached to Hon'ble Bombay High Court 5 th Floor, Bank of India Building, Mahatma Gandhi Road, Fort Mumbai-400 023. PAN : AACCA0545M
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. S. Padmaja
Date of Hearing	30.10.2017
Date of Pronouncement	30.10.2017

ORDER

PER BENCH:-

All the appeals filed by the revenue are directed against the orders passed by Ld CIT(A)-52, Mumbai and they relate to the assessment years 2006-07, 2007-08, 2009-10 and 2010-11. None appeared on behalf of the assessee, even though the notice was sent by registered post and also served through D.R. Hence we proceed to dispose of the appeal exparte, without the presence of the assessee.

2. The assessee is engaged in the business of manufacturing of weighing scales. The assessee was subjected to search operation u/s 132 of the Act on 04.02.2011 and hence the present assessments were completed u/s 143(3) r.w.s. 153A of the Act.

3. The common issue contested in all the years relate to the relief granted by Ld CIT(A) on disallowance of expenses. Since the assessee did not furnish details of expenses, the AO disallowed certain expenses @ 25%, where certain details were given and @ 100%, where no detail was given. The Ld CIT(A), however, restricted the disallowance to 10% of all expenses.

4. We heard Ld D.R and perused the record. We notice that the Ld CIT(A) has considered a portion of expenses while deciding this issue and did not discuss about all the expenses. It is a well settled proposition of law that the onus to prove the expenses lies upon the assessee. The Ld CIT(A) did not discuss as to how the assessee has discharged the onus. Hence, we are of the view that this issue requires fresh consideration at the end of Ld CIT(A). Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to his file for adjudicating the same afresh.

5. The next issue contested in AY 2006-07 relates to the disallowance made u/s 40A(2)(a) of the Act. The AO noticed that the assessee has paid salaries to directors and hence he asked the details of work performed by them. Since no satisfactory explanation was given, the AO disallowed 50% of salaries paid to the directors. The Ld CIT(A) disposed this issue by combining it with the issue relating to expenses. Since we have restored the issue relating to disallowance of expenses to the file of Ld CIT(A), this issue would also go back to his file for fresh adjudication.

6. The next common issue contested in AY 2007-08, 2009-10 and 2010-11 relates to the disallowance made u/s 40(a)(ia) of the Act. The AO disallowed certain expenditure for non-deduction of tax at source. The Ld CIT(A) deleted the same on the ground that the expenses were disallowed earlier on adhoc basis. We have earlier restored the issue relating to disallowance of expenses to the file of Ld CIT(A). Hence this issue also requires fresh adjudication at his end. Accordingly we restore this issue also to the file of Ld CIT(A) in all the three years referred above.

7. The next issue contested in AY 2009-10 and 2010-11 relates to the deletion of unaccounted cash expenses. The search team found a register containing unaccounted receipts and unaccounted expenses. The AO added both the items. The Ld CIT(A) held that the sources of unaccounted expenses is the unaccounted receipts. Accordingly he expressed the view that the unaccounted expenditure stands explained and hence no separate addition is called for.

8. The Ld D.R submitted that the Ld CIT(A) has allowed the claim without examining as to whether these expenses were incurred only out of unaccounted receipts. Accordingly she submitted that this issue requires fresh detailed examination. We find force in the said contentions. Accordingly we restore this issue also to the file of Ld CIT(A) for examining it afresh.

9. We are left with two issues in AY 2010-11. The first issue relates to the addition of Rs.73.44 lakhs. This also represents unaccounted receipts/expenditure. Consisted with the view taken in the earlier paragraphs, we restore this issue also to the file of Ld CIT(A) for adjudicating it afresh.

10. The next issue relates to the addition of Rs.12.70 lakhs relating to unexplained cash loan. The assessee had offered adhoc amount of Rs.5.00 crores during the course of search. Before Ld CIT(A), the assessee sought telescoping benefit for the above said amount of Rs.12.70 lakhs against the adhoc surrender of Rs.5.00 crores. The Ld CIT(A) agreed with the said request and accordingly deleted the addition.

11. The Ld D.R submitted that it is not clear as to whether the assessee has offered any amount during this year out of the adhoc surrender of Rs.5.00 crores. We find merit in the said submissions. It has first to be seen as to why and on what account, the assessee surrendered a sum of Rs.5.00 crores. Further it is to be seen whether the amount allocated to this year out of the adhoc surrender exceeds the above said amount. Hence, on a proper consideration of these aspects only, telescoping benefit could be given. We

notice that the Ld CIT(A) has not examined these aspects. Accordingly we restore this issue also to the file of Ld CIT(A).

12. In the result, the appeals of the revenue are treated as allowed for statistical purposes.

Order has been pronounced in the Court on 30.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

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

Mumbai; Dated : 30/10/2017

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//

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai