

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member]

I.T.A. No. 1815/Kol/2017
Assessment Year: 2012-13

I.T.A. No. 1816/Kol/2017
Assessment Year: 2013-14

&

I.T.A. No. 1817/Kol/2017
Assessment Year: 2014-15

J K Spices & Food Products.....Appellant
C/o Sri Jitendra Kaushik, Advocate
19-D, Muktaram Babu Street
Kolkata - 700 007
[PAN : AAFFJ 9137 H]

Income Tax Officer, Ward 35(2), Kolkata..... Respondent
Aayakar Bhawan Poorva
7th Floor
R/No. 716
110, Shantipalli
E.M. Bypass
Kolkata - 700 107

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Shri Gautam Mondal, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : December 27th, 2017

Date of pronouncing the order : January 31st, 2018

O R D E R

Per J. Sudhakar Reddy :-

All these appeals filed by the assessee are directed against the separate but identical orders of the Id. Commissioner of Income Tax (Appeals)-10, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 06th June, 2017, for the Assessment Years 2012-13, 2013-14 & 2014-15.

2. As the issues arising in all these appeals are identical, for the sake of convenience, we dispose of these appeals by way of this common order.

3. Facts in brief:-

The assessee is a partnership firm and is engaged in the business of trading in spices. The partnership firm has six partners, namely, Sri B. Jain, Smt. B.Jain, Smt. L. Jain, Sri A.K. Jain, Sri J.K. Jain & Smt. S. Jain. It is also stated that Smt. J. Jain, Sri V.Jain & Sri M. Jain, who are family members had managed the three depots of the assessee firm. Another family member, who is also involved in the day to day affairs of the assessee firm, is Sri S.D. Jain.

3.1. The issues that are before us for all the three years are disallowances made by the Assessing Officer of certain expenses claimed by the assessee to the extent confirmed by the Id. First Appellate Authority.

4. I have heard, Sri S.M. Surana, Id. Counsel on behalf of the assessee and Sri Goutam Mondal, Addl. CIT, Id. Senior D/R, on behalf of the revenue. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below and case-law cited, I hold as follows:-

I.T.A. No. 1815/Kol/2017; Assessment Year: 2012-13

5. The sole ground that arises for consideration in this appeal is as follows:-

“For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming disallowance made by the Ld. Income-tax Officer of a sum of Rs.80,000/- out of Rs.98,000/- of Advertisement Expenses incurred.”

5.1. The disallowance made was of the claim of the assessee that it had incurred expenditure as it had organized a dealers' conference at the Banquet Hall of Hotel Hindustan International Ltd.

The disallowance was made on the ground that the assessee could not prove that this expenditure was exclusively and wholly incurred for the purpose of

business. Before the Id. CIT(A), the assessee produced certain photographs to prove that there was a dealers' conference. The assessee also produced a certificate from the Hotel as evidence of having conducted a dealers' conference on that day. Payment was done by way of cross cheques. This evidence was rejected by the Id. CIT(A) on the ground that the photographs were hazy and as they were not submitted before the Assessing Officer.

5.2. I am of the considered opinion that this expenditure should be allowed as the assessee has discharged the burden of proof that lay on it. It is not a case of the Assessing Officer that he had evidence to prove that the expenditure was not incurred for the purpose of business. The amount of Rs.80,000/- was paid to the Hotel for holding a dealers' conference. In my view, the conclusion drawn by the revenue authorities on facts were based on conjectures. This expenditure has to be allowed. Hence, I allow this ground of the assessee.

5.3. In the result, ***I.T.A. No. 1815/Kol/2017; Assessment Year: 2013-14***, is allowed.

I.T.A. No. 1816/Kol/2017; Assessment Year: 2013-14

6. The grounds of appeal read as follows:-

- “1. For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming disallowance made by the Assessing Officer of Rs. 6,41,458/- of Travelling Expenses incurred.*
- 2. For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming disallowance made by the Assessing Officer of a sum of Rs. 3,48,626/- out of Rs. 11,68,672/- of Brokerage Expenses incurred.*
- 3. For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming disallowance made by the Assessing Officer of a sum of Rs. 3,48,000/- of Supervision charges incurred.*

4. For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming disallowance made by the Assessing Officer of a sum of Rs. 8,30,854/- of Sales Promotion expenses.

5. For that your appellant craves leave to adduce further or other ground/grounds, if any on or before the hearing of appeal.”

6.1. The first disallowance is of Rs.6,41,458/-, out of Travelling Expenses incurred. An amount of Rs.72,500/-, paid to Bhalotia Finance Pvt. Ltd., for the visit of Mr. S.K. Jain, to Kerala. It was submitted that the assessee purchases spices from Kerala. Evidence of purchase of spices was filed before the Assessing Officer. A copy of the same was placed at page no. 32 of the paper book. The Assessing Officer was of the view that this amount of Rs.72,500/-, was paid for a package tour to Kerala and included accommodation and sight-seeing. As in my view, though the assessee has produced evidences of having undertaken purchase of spices in Kerala during that period, the entire expenditure cannot be allowed, as what was paid for was for a package tour. Hence 50% of this expenditure may be disallowed. Thus, I restrict the disallowance to Rs.36,250/-. The balance is hereby allowed.

6.2. The second payment is of an amount of Rs.2,23,487/- for attending a dealers' conference, which was organized in Novatel Hotel at Hyderabad. The assessee has produced evidence to prove that there was a dealers' conference in Novatel Hotel, Hyderabad. A confirmation from Novatel Hotel was also enclosed as evidence. In view of these evidences, the expenditure is directed to be allowed.

6.3. The third item is payment made to Vinayak Leisure Tours, of Rs.1,38,849/-. The visit was to Thailand and was claimed as incurred for the purpose of expansion and promoting markets abroad. The assessee has produced certain correspondences with parties in Thailand, in support of his contention that they had certain business meetings therein. The assessee had also produced copy of export invoice and bill of lading in support of its claim. Both of these are dt. 14/06/2012 and 07/08/2012, respectively, which is before 26/10/2012. The Assessing Officer and the ld. CIT(A) disallowed this claim on the ground that the

expenditure is not for the purpose of business. In my view the assessee has produced cogent evidence of having business meetings in Thailand. There was trade links with Thailand. The assessee produced a certificate of registration as an exporter. Thus, this expenditure has to be allowed.

6.4. The last disallowance is of Rs.2,06,622/-, paid to Sri Ashok Kr. Jain and Sri Jitendra Kumar Jain for drawing foreign exchange for travel to Thailand.

In view of my decision in the case of allowability of Rs.1,38,849/- being travel expense to Thailand, I allow this claim of the assessee as this expense is also incurred for this foreign travel. In the result, this disallowance is hereby deleted.

7. The second ground of disallowance is of supervisory expenses claimed to have been incurred by the assessee. The Assessing Officer disallowed the claim to the extent of Rs.3,48,626/-, out of a total claim of Rs.11,68,672/-. Brokerage expenses of Rs.1,39,758/- was paid to Sri Mukesh Kr. Jain, Rs.75,958/- paid to Sri Vinod Kr. Jain and Rs.1,32,910/- paid to Smt. Jayshree Jain, were disallowed by the Assessing Officer. The claim of the assessee that these three persons were looking after sale of three outlets of M/s. J.K. Lifestores, was disbelieved as they were related parties. The assessee claims that they had rendered services and payments were made to them through account payee cheques in lieu of the services rendered. The Assessing Officer issued notice u/s 133(6) of the Act, to these three persons. This was complied with by these three persons who filed the details sought for. The assessee also filed details of the service rendered by these persons. T.D.S. was deducted on these payments. Income was duly declared by the recipients in their return of income. On these facts I am of the opinion that this disallowance is not called for. Hence I direct the Assessing Officer to allow the same. In the result, this ground of the assessee is allowed.

8. Ground No. 4, is on the disallowance of sales promotion expenses claimed by the assessee as having been incurred for a dealers' conferences at Hotel Hyatt Regency as well as at Hotel Novatel & Resorts, Hyderabad. The Assessing Officer disallowed the same on the ground that the assessee has failed to prove that it had

organized a dealers' meet. The assessee produced a bill dt. 25/01/2017, issued by Hotel Hyatt Regency as well as by Novatel Hotel & Resorts, Hyderabad. As the bills do not mention that there was a dealers' meet, the Assessing Officer disallowed this expenditure.

8.1. On appeal, the ld. First Appellate Authority, confirmed the same, though the assessee has produced the bills from Hotel Hyatt Regency, in proof at a dealers' meet at Hotel Hyatt Regency and bills from Novatel Hotel & Resorts, Hyderabad, of having held a dealers' meet certain correspondence was also produced as evidence. The assessee submits that it had registered a brand name "JK" and was aggressively building up the brand name and hence zonal dealers' meet were held.

8.1.1 In my view, this expenditure has been incurred wholly and exclusively for the purpose of business. The assessee in its paper book, pages 72 & 76 as well as 36 to 41 and page 77 has submitted evidence in support of incurring these expenditure. The Assessing Officer does not have any evidence to contradict the claim of the assessee. Hence, I direct that the above expenditure be allowed.

9. In the result, ***I.T.A. No. 1816/Kol/2017; Assessment Year: 2013-14*** is allowed in part.

I.T.A. No. 1817/Kol/2017; Assessment Year: 2014-15

10. First Ground is against the disallowance of an amount of Rs.3,26,925/-, out of the total expenditure of Rs.7,70,427/-, incurred by the assessee towards supervisory charges. The facts and issues are the same as Ground No. 2 for the Assessment Year 2013-14. Consistent with the view taken therein, I allow this ground of the assessee and direct the Assessing Officer to grant deduction of this amount incurred for supervisory charges.

11. Ground No. 2, is on the disallowance of Transfer expenditure of Rs.2,80,876/-. The amounts were incurred towards travelling expenses to Dubai

and South Africa for exports. The Assessing Officer disallowed the same on the ground that the documentary evidence justifying the expenditure was not filed.

11.1. In my view, the disallowance was made without any enquiry. The assessee has submitted letters and correspondences with various entities in Dubai and South Africa before the Assessing Officer, a copy of which are at pages 19 to 25 of the paper book as evidence of business undertaken in those countries. The Assessing Officer in my view disallowed this amount solely based on surmises and conjectures. As already stated, the assessee is a registered exporter of Government of India. Under these circumstances, I direct the Assessing Officer to allow this expenditure of Rs.2,80,876/-. In the result, this Ground of the assessee allowed.

12. Ground No. 3, is on the disallowance of Rs.1,28,000/-, being expenditure incurred on sales promotion. The assessee has produced evidence that it has conducted a dealers' conference in Hotel Hindustan International Kolkata.

12.1. The facts are similar to the facts of the only Ground for the Assessment Year 2012-13. Consistent with the view taken therein and based on the evidence filed on record and for the very same reasons, I allow this Ground of the assessee.

13. In the result, *I.T.A. No. 1817/Kol/2017; Assessment Year: 2014-15*, is allowed.

Kolkata, the 31st day of January, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated :31.01.2018
{SC SPS}

Copy of the order forwarded to:

1. J K Spices & Food Products
C/o Sri Jitendra Kaushik, Advocate
19-D, Muktaram Babu Street
Kolkata – 700 007

2. Income Tax Officer, Ward 35(2), Kolkata
Aayakar Bhawan Poorva
7th Floor
R/No. 716
110, Shantipalli
E.M. Bypass
Kolkata – 700 107

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches