

आयकर अपील अाधकरण, "सी" ढयायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL -BENCH, CHENNAI
ढी धुवु आर.एल रेडी, ढयायक सदय एवं ढी एस जयरामन, लेखा सदय के सम
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.2815/Mds/2016
ढाढण वष/Assessment Year:2011-12

M/s. United Alcobev Pvt. Ltd.,
ences Enclave, 5th Block, 7th Floor,
No. 1, Ramakrishna Street, T. Nagar,
Chennai 600 017.

Vs. The Assistant Commissioner of
Income Tax ,
Company Circle III(1),
Chennai 600 034.

[PAN:AAACU7209C]

(अपीलाथ /Appellant)

(ढयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri D. Anand, Advocate
ढयथ क ओर से/Respondent by : Shri N. Madhavan, Addl.CIT
सुनवाई क तारख/ Date of hearing : 25.10.2017
घोषणा क तारख /Date of Pronouncement : 24.01.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the
ld. Commissioner of Income Tax (Appeals) 11, Chennai dated 02.06.2016
relevant to the assessment year 2011-12. The first ground raised in the
appeal of the assessee is with regard to confirmation of disallowance of
brand promotion expenses and the second ground is with regard to
confirmation of disallowance on account of staff welfare.

2. This appeal of the assessee is time barred by two days in filing the appeal before the Tribunal. The assessee has filed condonation petition in support of affidavit requesting to condone the delay. By referring to the contents therein, the Id. Counsel for the assessee has prayed to condone the delay. We have gone through affidavit filed by the assessee and of the opinion that the assessee was prevented by sufficient cause. The Id. DR could not seriously object to condone the delay. Accordingly, we condone the delay of two days in filing the appeal and admit the same for hearing.

3. Brief facts of the case are that the assessee is a commission agents and filed its return of income declaring an income of .29,59,779/-. The return filed by the assessee was initially processed under section 143(1) of the Income Tax Act, 1961 [Act in short]. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 21.08.2012. Notice under section 142(1) of the Act was also issued on 23.09.2013 requiring he assessee to submit the details. Since there was no response from the assessee, notices were also issued on 06.11.2013 and 18.11.2013. Thereafter, the AR of the assessee furnished the details before the Assessing Officer.

3.1 On verification of the details filed by the assessee, the Assessing Officer noticed that during the previous year under consideration, the assessee has debited an amount of .39,99,713/- on account of brand

promotion charges. The assessee filed copies of the vouchers passed towards this expense. From the above, The Assessing Officer noticed that the assessee buys liquor from the TASMAC shops organize free samples near TASMAC shops and bars to the liquor consuming persons to promote their brands. The payment is made to the marketing executives by way of account transfer to their account. Against specific query, it was the submissions of the assessee that the assessee does brand promotion by distribution of free liquor samples near the TASMAC shops and bars to the liquor consuming persons. It was also the submission that it carries out special promotion drives in all the clubs and bars to induce consumer franchise. Since the assessee has not submitted any supportive evidence substantiating with third party evidence that the brand promotion activity has indeed been undertaken by the assessee company, the Assessing Officer disallowed the entire expenditure of .39,99,713/- and added back to the income of the assessee. On appeal, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By reiterating the submissions as made before the authorities below, the Id. Counsel for the assessee has submitted that the product for which brand promotion expense was incurred is liquor, though an excisable commodity, it is not possible to prove through third party. Generally, no individual, who

consume liquor, can admit before any authority that he consumed or had free peg. By relying on the consolidated order of the Tribunal in the case of Empee Breweries Ltd. v. ACIT in I.T.A. No. 2162/Mds/2014 & others dated 25.03.2015, the Id. Counsel for the assessee has prayed that the Coordinate Benches decision in the cross appeal may kindly be followed in the present appeal of the assessee. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard the rival contentions, perused the materials available on record and gone through the orders of authorities below. The assessee is a Del credere commission agent for IMFL products supplied to TASMAL by M/s. United Spirits Ltd. and M/s. Balaji Distilleries Ltd. The assessee has employed appropriate number of administrative staff and sale executives to handle the volume of business in Tamil Nadu. The assessee has claimed brand promotion expense of .39,99,713/-. In the assessment order, the Assessing Officer has admitted that the assessee has submitted its bills for liquor purchased, but demanded to substantiate with third party evidence that it has indeed carried on brand promotion activity against which, the Id. Counsel for the assessee has submitted that no individual who consume liquor, can admit before any authority that he consumed or had free peg. We find force in the argument of the Id. Counsel. We have also perused the decision of the Coordinate Benches of the Tribunal in the case of Empee

Breweries Ltd. (supra). In that case, similar brand promotion expense was restricted by the Id. CIT(A) to the extent of 7.5% of the total expenses on the ground of possibility of unreasonableness and excessive claim against which the Revenue was in appeal contending that the expense was non-genuine, whereas, in assessee's appeal, it was the contention that the restriction of expense of 7.5% is excessive. After considering the facts and circumstances as well as submissions of both the sides, the Tribunal sustained the order of the Id. CIT(A) and dismissed the appeal filed by the Revenue as well as assessee. In that case, the Id. CIT(A) has observed that the nature and extent of the "sales promotion activities" undertaken by the PPPL and their "reimbursement of expenses" are highly subjective. Except the purchase invoices and debit notes submitted by the PPPL, there are no other evidences to prove that the gift articles and promotional material have actually been distributed to the consumers/public. However, in the present case, the Assessing Officer has not disputed the bills/vouchers produced by the assessee incurred towards purchase of liquor from the TASMAL. But, he was demanding for third party evidence. In this case, the excisable commodity is liquor and the evidence demanded was the consumer who consumed the Peg free liquor is required to give evidence having consumed the free peg liquor offered by the promoter. The Id. Counsel for the assessee vehemently argued that no individual, who consume liquor, can admit before any authority that he consumed or had free peg liquor. We find force in the

arguments of the Id. Counsel. Considering the commodity offered towards its promotion near the TASMACH shops or outside or inside club/bars being liquor, we are of the considered opinion that it is not possible to get third party evidence. In the assessment order, it is not clear as to whether the assessee has filed complete vouchers for the expenses before the Assessing Officer or not. Therefore, we direct the assessee to file complete bills/vouchers before the Assessing Officer and the Assessing Officer is directed to examine the bills/vouchers for ₹.39,99,713/- and if the assessee has incurred the expenditure towards brand promotion, then the assessee is entitled to claim the same. Thus, the ground raised by the assessee is allowed for statistical purposes.

6. With regard to disallowance of staff welfare expenses, from the ledger account, the Assessing Officer noticed that the assessee has claimed expenditure of ₹.5,48,669/- towards lunch. The Assessing Officer disallowed a lumpsum amount of ₹.1,00,000/- on the ground that primary evidence for the same was not produced even though the payment was made through banking channels and moreover element of personal expenditure being included in the said expenses cannot be ruled out. On appeal, the Id. CIT(A) confirmed the disallowance.

6.1 We have heard rival contentions. To promote assessee's product, the assessee has employed appropriate number of administrative staff, sales

executives to handle the volume of business in Tamil Nadu, which was not in dispute. If the Assessing Officer is expected that the assessee should produce all the staff members who have taken lunch, etc. before him as primary evidence, we are of the considered opinion that it is not fair on his part. Once payment made through banking channel is not disputed, we delete the disallowance of .1,00,000/- made by the Assessing Officer on this ground.

7. With regard to disallowance of guest house expenses, the assessee has claimed an amount of .3,56,391/-, which includes painting works amounting to .30,000/- to CS Towers Flat Owners Association. The assessee has submitted evidence on expenditure incurred on various person and also cable and set-top cable charges incurred on the guest house. Since the evidence produced by the assessee are basically self-generated and self-certified and moreover, the assessee has not owned any guest house at CS Towers, but claimed painting work, the Assessing Officer disallowed the entire expenditure of .3,56,391/- and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance.

7.1 We have heard rival contentions. It was the submission of the assessee that it has to receive and accommodate the State Head-Sales for Tamil Nadu region and arrange for their visit to TASMACH headquarters, retail outlets, etc. and therefore, the expenditure incurred was for the assessee's

business to be allowed under section 37 of the Act. If the assessee has accommodated its guest in the Guest House/Hotels, then what prevented the assessee to produce original receipt of the Guest House/Hotels before the Assessing Officer? In this case, since the assessee has not produced any original receipt and in fact, it had produced basically self generated and self certified. Moreover, the occupant in the Guest House are not liable to bear cable and set top cable charge nor the assessee owned any guest house to incur such expenses. If the assessee has incurred expenditure for accommodating the State Head-Sales, the Assessing Officer is directed to allow guest house expenditure on production of guest house receipt/hotel receipt.

7.2 With regard to cable and set-top cable charges, we find that no details are available on record as to where and why it was incurred and to what extent it was incurred. Furthermore, with regard to the general expenditure, the assessee has failed to establish as to how the recipient of the benefit provided by the assessee are connected with the assessee and the expenditure is incurred for the purpose of business of the assessee.

7.3 With regard to painting work charges of .30,000/-, since the assessee has not owned any Guest House at CS Tower, the Assessing Officer is fully justified in making disallowance of painting charges. In view of the above, we are of the considered opinion that the Assessing Officer has

rightly made the disallowance of .3,56,391/-, which includes painting charges and guest house charges, etc. Thus, we find no infirmity in the order passed by the Id CIT(A) and hence, the ground raised by the assessee is dismissed.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 24th January, 2018 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 24.01.2018

Vm/-

आदेश कॆ ढतलतत अडत/Copy to: 1. अडतलतत/Appellant, 2. डततत/Respondent, 3. आतकत आतुत (अडतल)/CIT(A), 4. आतकत आतुत/CIT, 5. ततततत ततततत/DR & 6. ततततत/GF.