

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai**

**Before Shri Joginder Singh, Judicial Member  
and Shri G. Manjunatha, Accountant Member**

**ITA Nos. 4140 & 4141/Mum/2015**  
(Assessment Years: 2005-06 & 2008-09)

DCIT, Central Circle 4(3) Central Range-4 Mumbai	Vs.	M/s. Avon Corporation Ltd. 15/B, Kamal Kunj, S.V. Road Andhri (W), Mumbai 400-058
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PAN – AACCA0545M

**Appellant**

**Respondent**

Appellant by: Shri Rajesh Damor  
Respondent by: None

Date of Hearing: 08.02.2018  
Date of Pronouncement: 21.02.2018

**ORDER**

**Per G. Manjunatha, AM**

These two appeals filed by the Revenue are directed against separate, but identical orders of the CIT(A)-52, Mumbai dated 09.04.2015 and they pertain to A.Y. 2005-06 and 2008-09. Since, the facts are identical and the issues common, these appeals were heard together and are disposed off by this common order for the sake of convenience.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of weighing scales etc. The assessee has filed return of income for A.Y. 2005-06 and 2008-09 under Section 139(1) of the Income Tax Act, 1961 (hereinafter "the Act") on 31.10.2005 and 30.09.2008, respectively. Subsequently a search and seizure action under Section 132(1) of the Act, was carried out on the premises of the assessee company as also the residence of the Directors and associated persons. During the course of search, various incriminating documents and loose papers, etc. were found and seized, apart from some cash and jewellery. It is also gathered that the assessee was engaged in transactions of bogus

purchases in a big way and had admitted significant amount in this regard as per the statement made vide letter dated 13.04.2011. Consequent to search, notice under Section 153A was issued and called for return of income for six years immediately preceding the year in which search took place. The assessee has filed the return of income on 20.07.2012. The assessment was completed under Section 143(3) r.w.s. 153A of the Act, on 31-10-2013 by making various additions. Aggrieved by the assessment order, assessee preferred an appeal before the CIT(A).

3. Before the CIT(A) the assessee has filed elaborate written submissions. The CIT(A) for the detailed reasons recorded in his order dated 09.04.2015 partly allowed the appeal filed by the assessee for both the assessment years. Aggrieved, Revenue is in appeal before us.

4. None appeared on behalf of the assessee even though notice was sent by Registered Post and also served through Departmental Representative. We have heard the learned D.R. and perused the material on record. The first issue came for consideration from these appeals is the addition made by the AO based on adhoc disallowance of certain expenses on the ground that the assessee has failed to furnish any evidence to justify the expenses. The AO disallowed certain expenses @25% where certain details were furnished and @100% where no details were given. The learned CIT(A), however, restricted the disallowance to 10% of the expenses.

5. The learned D.R. at the time hearing submitted that the Revenue has filed appeals against the orders of the CIT(A) for all the six years. However, the appeals of the assessee for assessment years 2006-07, 2007-08, 2009-10 and 2010-11 have been disposed off by the ITAT "F" Bench, Mumbai vide their order dated 13.10.2017 and set aside all the issues raised by the Revenue to the file of the CIT(A) for fresh consideration.

6. We find that the ITAT "F" Bench, Mumbai in ITA No. 3582 to 3585/Mum/2015 for assessment years 2006-07 to 2009-10 has set aside the issues raised by the Revenue to the file of the CIT(A) for fresh

consideration. The relevant portion of the order of the ITAT is extracted below: -

*“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.”*

The issue involved in these two appeals are more or less similar to the issues already considered by the ITAT in the above cases. Therefore, for the similar reasons we set aside the issues in these two appeal filed by the Revenue to the file of the CIT(A) to be considered afresh in the light of the grounds of appeal raised by the Revenue. Hence, we set aside these two appeals and direct the CIT(A) to consider the issue afresh in the light of the grounds of appeal of the Revenue with an opportunity of hearing to the assessee.

7. In the result, the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> February, 2018.

Sd/-  
**(Joginder Singh)**  
**Judicial Member**

Sd/-  
**(G. Manjunatha)**  
**Accountant Member**

Mumbai, Dated: 21<sup>st</sup> February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -52, Mumbai*
4. *The CIT, Central-2, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.