

IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA
BEFORE SHRI N.K. SAINI (Accountant Member) &
SHRI AMIT SHUKLA (Judicial Member)
ITA No.18/Pat/2015
Assessment year: 2010-11

M/s Patliputra Equipments Pvt. Ltd., A-15, 2 nd Floor, Luv Kush Towers, Exhibition Road, Patna.	Vs.	DCIT, Circle-2, Patna.
PAN/GIR No. AAECPO181C		
(Appellant)	..	(Respondent)

Department by: Shri Abhay. Kumar, DR
Assessee by: Shri A. K. Rasstogi and
Shri Rakesh Kumar, Adv.

Date of hearing: - 05/03/2018
Date of Pronouncement: - 07/03/2018

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the appellant- assessee against impugned order dated 04.02.2015, passed by Ld. CIT (Appeals)-1, Patna for the quantum of assessment passed u/s 143(3) of the Income Tax Act, for the assessment year 2010-11.

2. In various grounds of appeal, the assessee is mainly challenging the sustenance of disallowance of expenses of

Rs.10,00,000/- on estimate basis by the Ld. CIT(A), under the head 'Commission', 'Scheme discount' and 'Business promotion'.

3. The facts in brief, *qua* the issue involved are that the assessee company is engaged in the business of sale of infrastructure machines like, JCB machines and their spare parts. The AO on the perusal of the details of various expenses noted that expenses under the head 'Commission', 'Scheme and discount' and 'Business Promotion' have increased manifold as compared to the earlier years. He further noted down the following increase in the claim of expenses in this year in comparison to the similar claim of these expenses made in assessment year 2009-10, which are as under:-

Expenses under the heads commission, Scheme and Discount and Business Promotion:

Heads	Claim for the A/Y 2009-10	Claim for the A/Y 2010-11	% Increase
Commission	522500	2199287	420%
Scheme and Discount	20868672	74240099	355%
Business Promotion	848647	3734490	440%
Carriage Outwards	3761500	10452586	277%

4. Though, AO noted that the turnover has also increased by 2.4 times from the preceding year, however, compared to the proportion of increase in the turnover, there is a huge increase in the expenditure and also assessee has incurred huge cash expenditure which is evident from the narration given in the vouchers and ledger account as "being cash paid to driver/ being cash paid to the driver assistant". He further observed that the assessee under the head "carriage outward" had debited expenditure of Rs.1.04 crores. In such a situation it is hardly justifiable for further payment to the driver under the head commission. Based on these observations, he proceeded to make ad-hoc disallowance of Rs. 20 lacs under these heads on account of following reasons:

"i. There has been unreasonable and disproportionate increase in the expenses.

ii. Major portion of the expenses have been incurred in cash. Thus under the head commission, an expenses of Rs.19,24,287/- has been incurred, all in cash and each below Rs.3,000/-. Similarly in respect of 'Business Promotion', expenses by way of cash amounting to Rs.21,70,090/- has been claimed. All expenses are by way of cash. In this regard it has been explained that to boost sales, companies launch scheme and the customers are offered free insurance/ road tax/ free parts etc. Where free part are to be given, the assessee has treated the amount as his sale and parts have been handed over to the purchasers as per scheme of the company.

Expenses in the similar manner appear in respect of other debits like contractual salary, bonus, incentive etc. As regards expenses under the head "freight outwards", a total of 532 entries all of Rs.19,500/- has been booked. Thus entire amount comes to Rs.1,03,74,000/-. Sellers would have been from different places and delivery points must have been different. Hence under this circumstances, booking of the similar amount, i.e. Rs.19,500/- is hardly believable. These examples are only illustrative and reflective of the manner as to how the expenditure have been claimed. Thus on account of non-verifiability of expenses, I am constrained to disallow a part of the expenses as mentioned above."

5. Ld. CIT (A) has reduced the ad-hoc disallowance from Rs.20 lacs to Rs.10 lacs on the ground that most of these expenditure have been incurred in cash, which are not verifiable. By and Large he has confirmed the observations and findings of the AO.

6. Before us, Ld. Counsel submitted details of comparative statement of expenses and also the comparative chart of GP and NP rate, from the assessment years 2008-09 to 2010-11. The said chart for the sale of ready reference is reproduced hereunder:-

Comparative statement of expenses:

Heads	Amount claimed	Percentage to turnover Rs.43,22,14,053	Amount claimed	Percentage to turnover Rs.116,75,59,651/
	2009-10		2010-11	

Commission	5,22,500/-	0.12	21,99,282/-	0.19
Scheme & discount	2,08,68,672/-	4.83	7,42,40,099/-	6.36
Business Promotion	8,48,647/-	0.20	37,34,490/-	0.32
Carriage Outward	37,61,500/-	0.87	1,04,52,586/-	0.90

A.Y	Turnover	G.P	%	Net Profit	%
2008-09	41,47,64,267	40566797	9.78	6907822	1.67
2009-10	43,22,14,053	46772745	10.82	8374722	1.94
2010-11	116,78,19,653	120719167	10.34	17843438	1.53

7. He further submitted that entire books of accounts and details of expenditure have been furnished in which no discrepancies has been found except for stating that some of the expenditure have been incurred in cash. However, he submitted that such cash expenditure in the assessee's case are not inevitable but also were in line with the earlier years. Thus, ad-hoc disallowance made by the CIT (A) should be deleted.

8. On the other hand, Ld. DR strongly relied upon on the orders of AO and CIT (A) and submitted that already AO has given detail reasoning for making such disallowance, which has been

substantially scaled down by the Ld. CIT (A) and, therefore, no interference should be made.

9. After considering the rival submissions and also on perusal of the relevant findings given in the impugned order, we find that the main reason for the AO to make ad-hoc disallowance was that, *firstly*, there has been substantial increase in the expenditure under the head of 'Commission', 'Scheme and discount' and 'Business promotion' and *secondly*, most of the expenditure have been incurred in cash which are not subject to verification. So far as, the reasoning given that there has been substantial increase in the amount of expenses claimed under these heads, we find that not only the assessee's turnover has gone up 2-1/2 times, but also there is substantial increase in the gross profit and net profit, which is evident from the chart reproduced hereinabove. Likewise, the percentage of expenditure claimed on the ratio of the turnover has by and large remained within the same range, except for some marginal increase, but such marginal increase is justified looking to the over-all growth in the turnover as well as manifold rise in profit of the assessee. Thus, such kind of reason cannot be the ground for

making any kind of ad-hoc disallowance, unless any specific defect or any expenditure have found to be non-genuine. So far as, the expenditure is incurred in cash, it is undisputed fact that similar expenditure had been incurred in cash in the earlier year also and looking to the nature of payments made to the various persons including driver, driver assistant etc., cash expenditure is quite inevitable. Simply because expenditure has been incurred in cash, it does not warrant any kind of ad-hoc disallowance, for which there are separate provisions under the Act to take an adverse view like section 40A(3). Accordingly, we do not find any reason to sustain any kind of ad-hoc disallowance, especially neither the books of accounts have been found to be defective nor any expenditure has been found to be unverifiable for non-business purpose. Accordingly, ground made by the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 17th March, 2018.

Sd/-

(N.K. Saini)
Accountant Member

Sd/-

(Amit Shukla)
Judicial Member

Date of order: 17th March, 2018.

S.Sinha

Copy of the Order forwarded to:

1. The Appellant.
2. The Respondent.:
3. The CIT(A)-Patna
4. CIT , Patna
5. Income Tax Appellate Tribunal,Patna
6. Guard file.

//True Copy//

BY ORDER

PRIVATE SECRETARY