

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos. 1228 & 1204/Chd/2017

Assessment Year: 2011-12

The Asst. CIT
Circle, Patiala

Vs. M/s Patiala Distt. Co-op Milk
Producers Union Ltd;
Sirhind Road, Patiala

PAN No. AAAAT0459K

(Assessee)

(Respondent)

Assessee By : Shri. Deepak Agarwal
Revenue By : Shri. Manjit Singh

Date of hearing : 08/03/2018
Date of Pronouncement : 22/05/2018

ORDER

PER BENCH:

Both the above appeals have been filed by the Revenue against the common order of Ld.CIT(A), Patiala dt. 24/05/2017.

2. Since the issues raised in both the appeals are identical and the Revenue submitted that two appeals have been filed inadvertently for the same year. Hence appeal No. 1228/CHD/2017 may be treated as withdrawn and we accordingly dismiss the appeal.

3. We shall deal with ITA No. 1204/CHD/2017 wherein the Revenue has raised the following grounds:

1. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs. 5,02,809/- on account of plastic crate breakage expenses.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in deleting the addition of Rs. 43,85,618/- on account of unsubstantiated increase in "store material consumed" expenses.

3. It is prayed that the order of Ld. CIT(A) be set aside and that of the Assessing Officer restored.

4. The Assessing Officer made disallowed an amount of Rs. 5,02,809/- claimed by the assessee in the P&L Account under the head 'Plastic Crate Breakage Expenses' treating the same as capital expenses.

5. The Ld. CIT(A) while deleting the addition held that, the said breakage occurred during the course of handling of these items by the labour and is in the nature of normal wear and tear while handling the milk supply and it was an allowable expense under section 37 (1) of the Act. The Ld. CIT(A) also held that it is seen while holding the impugned expenditures as capital in nature, the AO has given the general finding without any elaboration thereon. It is a fact that the milk crates are used in the normal course of business of the assessee for carrying milk etc. Their wear and tear and breakage is quite normal in the course of the business of the assessee. The replacement of broken crates is a regular feature of the assessee's business and the cost of each plastic crate is insignificant. Moreover, plastic crate have a limited life span. The expenditure so incurred does not add to the capacity of the assessee. Rather it helps in maintaining it and ensuring the smooth conduct of the business. Therefore, in the given set of facts and circumstances the expenditure incurred on account of the breakage of plastic crates is essentially of revenue nature which is clearly allowable under section 37(1) of the Act.

6. Before us the Ld. DR relied on the Assessment Order and the Ld. AR supported the order of the Ld. CIT(A).

7. We have heard Ld. Representatives of both the parties. We have gone through the facts of the case and hereby hold that by any stretch of imagination the breakage of plastic crates due to wear and tear, used for transportation of milk sachets cannot be treated as capital expenditure and hence, we decline to interfere in the order of the Ld. CIT(A).

8. As a result appeal of the Revenue on this ground is dismissed.

9. The second issue relates to addition on account of unsubstantiated increase in "store material consumed" expenses.

10. The Assessing Officer noted that there was 150% increase in the expenses debited under the above said head as compared with those of the preceding year whereas the sales had only increased by 17%. On being show caused as to why adverse view should not be taken in respect of these expenses, the assessee submitted that due to inadvertent error the cost of certain raw materials like Atta, besan and sugar used for preparing *panjiri* to the extent of Rs. 43,85,618/- was wrongly debited to the "store material consumed" account, as such there was no such abnormal increase of expenses. However, in the absence of corroborative documentary evidence supporting the contention of the assessee, the AO disallowed these expenses.

11. The Ld. CIT(A) deleted the addition holding that the Assessing Officer had not appreciated the working of the assessee unit wherein government has installed a pre-audit system and no payment can be made without Bill and without the approval of the competent authority. Moreover, the sale of *panjiri* in the year under consideration has been to the tune of Rs. 1,30,63,751/- whereas the purchase for this item was only to the extent of Rs. 6,318/- only. This could not have happened if the assessee had not purchased ingredients of *panjiri* i.e. atta, besan and sugar etc. as explained above which were inadvertently debited to the wrong account i.e. "store material consumed" account. Moreover, the booking of expenses under the head store material consumed instead of purchases has no impact on the income of the assessee in any manner. The

books of accounts of the assessee have also not been rejected and the gross profit ratio has also been accepted as shown by the assessee.

12. Before us Ld. AR submitted that given an opportunity, the bills and vouchers pertaining to purchase of raw material like atta, besan, sugar would be produced before the Assessing Officer so as to prove the genuineness of the expenditure which could not be produced before the Assessing Officer to support the claim during the assessment proceedings. Hence, we remand the matter back to the file of the Assessing Officer for the limited purpose of verification of the bills and vouchers pertaining to the purchase of raw materials for preparing panjiri and to allow the expenditure accordingly based on the evidences produced.

13. As a result appeal of the Revenue in ITA No. 1228/CHD/2017 is dismissed and in ITA No. 1204/CHD/2017 is partly allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER
Dated : 22/05/2018
AG

Sd/-
(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Copy to: The Assessee, The Respondent, The CIT, The CIT(A), The DR