

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, "D" AT KOLKATA
(समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 682/Kol/2018
Assessment Year: 2009-10

M/s. SRK Tea Processing Industries Ltd. [PAN: AAHCS 0233 P]	Vs.	ACIT, Circle 1, Jalpaiguri
Appellant		Respondent

Date of Hearing	22.01.2019
Date of Pronouncement	20.02.2019
For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Shri Shankar Halder, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the Assessee against the order of Ld. CIT(A) – Jalpaiguri dated 07.03.2018 for Assessment Year 2009-10. The main grievance of the assessee is against the action of the Ld. CIT(A) in restricting the disallowance by 5% when AO disallowed 10% expenditure claimed by the assessee.

2. Brief facts of the case is that the assessee had claimed expenditure of Rs. 8,86,176/- on various heads. During scrutiny, the AO noted that assessee had paid the amount by way of self-made debit vouchers and therefore, according to him there is a possibility of the assessee inflating the expenses. Therefore, he estimated the disallowance @ 10% of expenses claimed by assessee, which comes to Rs. 88,618/- which was therefore added to the income of the assessee. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to restrict it to 5% of the total expenses. Aggrieved the assessee is before us.

3. We have heard the rival contentions of both the parties and perused the material available on record. We note that the assessee company's, accounts are audited and the AO

while scrutinizing the expenses claimed by the assessee disallowed the same to the tune of Rs. 8,86,176/- which was 10 percentage of the expenses claimed because the assessee produced before the AO self-made debit vouchers.

4. We note that the AO could have ventured into estimation only after rejecting the books of accounts of the assessee u/s 145(3) and thereafter by best judgment assessment u/s 144 of the Act. Here in this case, the AO has not passed any order u/s 144 of the Act. The AO thus without rejecting the books of account of the assessee has gone for estimation on suspicion and conjectures that the assessee may be inflating its expenses with the self-made vouchers. While scrutinizing the expenditure if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrance of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the AO; and item-wise the AO could have disallowed the expenditure rather than going for adhoc disallowance of percentage basis of the expenses claimed by the assessee which action of the AO is arbitrary in nature and cannot be sustained. Therefore, on the same reasoning, we set aside the Ld. CIT(A) order wherein also he had restricted the expenses claimed @ 5 percentage of expenses which is also adhoc disallowance. Therefore, the addition is directed to be deleted. Other grounds of appeal are general in nature so dismissed.

5. In the result, the appeal of assessee is partly allowed.

Order is pronounced in the open court on 20 February, 2019

Sd/-

(Dr. A. L. Saini)
Accountant Member

Sd/-

(Aby T. Varkey)
Judicial Member

Dated : 20 February, 2019
Biswajit (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. SRK Tea Processing Industries Ltd., Saraswatipur Building, Raikatpara, Kotwali, Post. & Dist. Jalpaiguri – 735 101.
2. Respondent – ACIT, Circle 1, Jalpaiguri
3. The CIT(A),
4. CIT ,
5. DR,

/True Copy,

By order,

Assistant Registrar/H.O.O

ITAT, Kolkata