

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1044/Kol/2018 Assessment Year:2013-14
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Amiya Kumar Samanta 35, Armenian Street Kolkata-700001 [PAN No.ALXPS 9225 M]	बनाम/ V/s.	Income Tax Officer, Ward-34(2), Ayakar Bhawan, Poorva, Santipally, Kolkata-107
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri U. Dasgupta, AR
प्रत्यर्थी की ओर से/By Respondent	Shri C.J. Singh, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	25-02-2019
घोषणा की तारीख/Date of Pronouncement	28-02-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2013-14, arises against the Commissioner of Income-tax (Appeals)-10, Kolkata's order dated 28.09.2016 passed in case No.32/CIT(A)/Wd 34-(2)/2016-17/Kol, involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's twin substantive grounds seek to reverse both the lower authorities' action disallowing /adding adjustment amount against the damaged goods provided to various retailers as well as display and shop establishment and development head expenditure involving sums of ₹13,45,480/- and ₹18,16,099/- made in both the lower proceedings.

3. The assessee as well as Revenue reiterate their respective pleadings against and in support of impugned disallowance / addition. It transpires during the course of

hearing that assessee had filed his appeal **ITA No.2019/Kol/2016** as accepted in order dated 29.08.2018 vide its following detailed discussion:-

“9. We have given a careful consideration to the rival submissions and perused the material available on record, we note that M/s Hindusthan Unilever Ltd (HUL) raised credit notes in favour of the assessee only on proper verification of their report. The HUL never allowed damage claim on their own accord and sweet will. The Salesmen are mostly illiterate. Sometimes goods are received back for replacement on verbal assurance by the salesmen. In any case, HUL never issued credit notes without evidence and proper verification of claim. In assessee’s business scenario it happened many a times that retailers may not accept goods as per invoice for various reasons. So they return the same to the Distributor (Assessee). The assessee, in turn through software, communicates the same to HUL. In turn HUL on receipt of intimation through software show in the datewise sales register and sales return. We note that the purchase and sales return have not been shown on the face of the account. Both purchase and sales returns have been deducted from purchases and sales which has no impact on profit. 10. We note that credit notes have been produced before the AO during the assessment proceedings as well as appellate proceedings. We note that as regards claim of Rs.46,71,583/- allowed to the retailers, it was on account of adjustment for display and business promotion. The assessee in order to retain his retailers and compete in the market, accepts less payments being given by the retailers than the bill amount. On festive seasons, the retailers make contributions towards social functions being organised by the local club, association etc and display banners of HUL in these functions and they realise the expenditure from the assessee by making less payment than the bill amount. The assessee also stated that the receipts for actual expenditure cannot be obtained from the retailers since the practice of issuance of receipts generally is not in vogue. We note that neither the Id. CIT(A) nor the AO brought any evidence on record to disprove that display and business promotion expenditure incurred by the assessee. The Id AO and Id CIT(A) both have failed to demonstrate that debit notes issued by assessee in favour of HUL and credit notes issued by HUL in favour of assessee are bogus and not supported by books of accounts . The AO has also not brought any cogent evidence to show that the addition to the tune of Rs.30,08,787/- is bogus and without making any entry in the books of accounts in respect of debit notes and credit notes. We note that the Id AO has not rejected the books of accounts of the assessee and he has accepted the profit declared by the assessee. Considering the nature of the business and the products involved, it is necessary for the assessee to incur expenses on display and business promotion. If the assessee does not incur expenses on business promotion, the product will not be sold in the market and there would be business loss. Therefore, considering the aspect of commercial expediency and customs prevailing in the retail trade, we note that the assessee has to incur these expenses, in order to run the business and these expenses are related to the business activity. The assessee has been dealing with approximately 1400 retailers, and that the assessee had to bear Rs.200/- or Rs.300/- per month for each Shop (Debtor) to push products of M/s Hindustan Unilever Ltd. in the market, and this is a customary practice in this type of wholesale trade. Otherwise the wholesaler cannot retain his retailers. We note that the assessee has proved the bona fide of his claim by submitting the ledger account, debit notes, credit notes. We also note the practice prevailing in the market in retail trade. Considering all the facts and circumstances and practical aspects in retail trade, as explained above, we delete both the additions to the tune of Rs. 76,80,370/- (Rs.30,08,787 + Rs.46,71,583).”

Learned Departmental Representative submits that both the instant issue requires factual verification in view of learned co-ordinate bench's findings. Mr.Dasgupta is fair enough in not objecting of this factual verification of plea. I therefore restore both the instant issues back to the Assessing Officer for factual verification in terms of learned co-ordinate bench's decision in assessee's favour in preceding assessment year.

4. This assessee's appeal is allowed for statistical purpose in above terms.

Order pronounced in open court on 28/02/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,

*Dkp/Sr.PS

दिनांक:- 28/02/2019 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Amiya Kr. Samanta, 35, Armenian Street, Kolkataa-001
2. प्रत्यर्थी/Respondent-ITO Ward-34(2), Ayakar Bhawan, Poorva, Santipally, Kol-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।