

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A.T.VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1311/Kol/2015

(निर्धारणवर्ष / Assessment Year:2011-12)

Amiya Kumar Samanta	Vs.	ITO, Ward-34(2), Kolkata
35, Armenian Street, Kolkata-700001		Aayakar Bhawan Poorva, Shantipally, Kolkata-700107.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ALXPS 9225 M		
(Assessee)	..	(Revenue)

Assessee by :Shri U. Dasgupta, Advocate
Respondent by : Shri RadheyShyam, CIT DR

सुनवाईकीतारीख/ Date of Hearing : 31/12/2018

घोषणाकीतारीख/Date of Pronouncement : 08/03/2019

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee pertaining to assessment year 2011-12, is directed against an order passed by the learned Commissioner of Income Tax (Appeals)-10, Kolkata (in short the Id. CIT(A)], which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the Act) dated 30.03.2014.

2. The grievance raised by the assessee are as under:

1. For that on the facts of the case the order of the Ld. CIT(A) is arbitrary and the CIT(A) was not legally justified in sustaining the additions made in the assessment order.

2. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining the addition of Rs. 29,383/- being amount received from the principal seller (HUL) on A/c of sales promotion, on the basis of Form 26AS, when the entire amount has duly formed a part of receipts and disbursed to retailers (and in absence of any element of profit), the addition may please be deleted.

3. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining an addition of Rs. 25,144/- u/s 40A(3), being cash payment made for purchase of motor car (being capital asset), and not claimed as revenue expenditure, the addition wrongly made may please be deleted.

4. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining the addition of Rs. 34,00,000/- on a/c of advance received from retailers (customers) against proposed sales of goods effected in immediately subsequent financial year, and more so, the disputed sum has formed a part of gross sale proceeds in subsequent year, the addition made on suspicion may please be deleted.

5. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining the addition of Rs.62,21,210/- under the head 'undisclosed profits', when the same are credit notes issued by the principal (Hindustan Unilever Ltd.) as reimbursement of payments disbursed to various retailers, by the appellant, as per company instructions, and the addition made on suspicion and presumption, may please be deleted.

6. For that on the facts of the case the Ld. CIT(A) was not justified in sustaining the addition of Rs. 3,71,996/- on account of 'cash receipts' when the said cash has been realized from customers against SALES of goods and the additions made on presumption and suspicion may please be deleted.

3. Ground No.1 raised by the assessee is general in nature therefore does not require adjudication.

4. Ground No. 2 raised by the assessee relates to addition of Rs.29,383/- on account of difference in form No. 26AS vis-à-vis amount receivable from the principal seller (HUL), on account of sales promotion.

5. The brief fact qua the issue are that from 26AS statement, the AO noted that during the relevant financial year, the assessee had received contractual payment of Rs.4,13,808/- from Hindusthan Unilever Ltd. (HUL) which was subjected to tax deduction at source for Rs.4,147/-. However, in the return, the assessee claimed credit for TDS at Rs. 3,893/-. During the assessment proceedings, the assessee was asked to explain as to how contractual receipt from HUL had been accounted for in the account and why TDS credit was claimed at Rs.3,893/- instead of Rs. 4,147/-. In response, the assessee explained the AO that receipt was accounted for Rs.4,15,603/- credited to Profit & Loss account under the head Misc. Receipt (Sales Promotion). In the Profit & Loss account, the assessee also debited Rs. 4,15,603/- on account of sales promotion. On verification of sales promotion account maintained by the assessee it was observed that receipt to the extent of Rs. 3,84,425/- from HUL had been accounted for and shown to have been paid and the balance amount i.e. Rs. 31,178/- (Rs. 4,15,603 - Rs. 3,84,425) was paid in cash for sales promotion by the assessee himself. Assessee submitted a copy of the sales promotion account before the AO. Therefore, AO noted that receipt to the extent of Rs.29,383/- (Rs. 4,13,808 - Rs. 3,84,425) from HUL was not taken in the account and credit for TDS to the extent of Rs. 254/- also remained unclaimed. Accordingly, Rs. 29,383/- was added to the returned income of the assessee as his undisclosed income.

6. On appeal, the Id. CIT(A) confirmed the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before us.

7. We have heard both the parties and perused the material available on record. We note that the AO has clearly brought that receipts to the tune of Rs. 29,383/- (For which a TDS of Rs. 254/- was also available) have not been accounted for. The reasons offered by the counsel for the assessee, are very general and non-specific in nature, therefore, the addition made by AO is justified.

However, before the Bench, the Id. Counsel for the assessee has submitted that instead of disallowing the entire sum of Rs. 29,383/- only the profit element should be disallowed. That is, the said amount of Rs. 29,383/- belongs to expenses and only the profit element should be disallowed. The Id. DR for the revenue has

fairly agreed with the proposition canvassed by the Id. Counsel for the assessee. Therefore, we direct the Assessing Officer to disallow only the profit element out of Rs. 29,383/- i.e. the net profit rate of the assessee for the assessment year under consideration should be taken into account to compute the tax payable by assessee. Accordingly, we direct the Assessing Officer to disallow the profit element by applying the net profit ratio for the assessment year under consideration, which is available in the audited financial statement of the assessee. Therefore, we allow this ground raised by the assessee partly.

8. Ground No.3 raised by the assessee relates to addition of Rs. 25,144/- u/s 40A(3) being cash payment made for purchase of motor car.

9. At the outset itself the Id. Counsel for the assessee submitted that the amount of Rs. 25,144/ paid by the assessee is related to registration fee deposited by the assessee company to register of the vehicle with Vehicle Registration Authority. Therefore, it is neither income of the assessee nor expenses but it is a capital expenditure debited to vehicle-fixed assets account. Moreover, the counsel also submitted that the said amount has not been routed through the profit & loss account of the assessee therefore, no disallowance should be made.

We note that the Id. DR for the Revenue has fairly agreed with the Bench that the sum of Rs.25,144/- paid by the assessee to register the vehicle with appropriate authority, is in the nature of capital expenditure and should not be disallowed as a revenue expenditure. Moreover, the payment made to the registering authority of the vehicles in cash does not attract the disallowance u/s 40A(3) of the Act and therefore we delete the addition of Rs.25,144/- made by the Assessing Officer and sustained by the Id. CIT(A).

10. Ground No. 4 raised by the assessee relates to addition of Rs.34,00,000/- on account of advance receipt from retail customers against proposed sales of goods effected in immediately subsequent financial year.

11. At the outset itself, Id counsel submitted before us that the assessee received advance payment against supply from 298 parties from Hindustan Unilever Limited (HUL). However, the AO has noted that the narration for each receipt of advance was merely being cash received from HUL party as advance" or "being cash received against sale bill". The name of the party has not been mentioned in the ledger account.

However, the Id counsel again submitted before us that that for some of the product of M/s HUL there always was a huge demand in the market, and therefore the assessee would take advance payment from interested customers.

On the other hand, Id DR for the Revenue submitted before us that neither during the assessment stage nor during the appellate stage, the complete list of verifiable address or PAN of the parties were presented. Since the assessee was receiving advances from these parties, and purportedly having continuous transaction with them at least he ought to have given verifiable address with postal PIN codes. Admittedly in the absence of proper addresses it is difficult for the AO to carry out further verification.

Per contra, the Id Counsel submitted before us that assessee now furnished the confirmation from the retailers in respect of cash receipt from HUL party as advance. We note that these confirmations were not examined by the Assessing Officer and these are additional evidence before us. Therefore, considering the principle of natural justice in mind and fair play, we are of the view that this issue requires to be set aside to the file of the Ld. Assessing officer to examine the confirmations of parties. Accordingly, we set aside the order of the Ld. CIT(A) and restore the issue to the file of the Assessing officer with the direction to re-adjudicate this issue in the light of the discussion made (supra).Therefore, statistical purposes this ground of the assessee is treated to be allowed.

12. Ground No. 5 raised by the assessee relates to addition of Rs.62,21,210/- under the head 'undisclosed profit'.

13. At the outset itself the Id Counsel for the assessee requested the Bench to remit this issue back to the file of the Assessing officer for fresh examination. The Counsel submitted before us that the assessee would, on the instruction of HUL allow various kinds of credits, discount and incentive to the retailers, and subsequently placed such claims before HUL in Customer Claim Summery Form.

Per contra, Id DR for the Revenue submitted before us that only certain accounts are debited (in cash) when payments are being made to customers. However, none of the customer's name are found in the narrations. During the course of assessment the AO require the assessee to submit the name of the parties to whom cash payment are being made purportedly for display of goods. However, such a list was neither produced during the assessment stage nor during the appellate stage. The assessee has not been able to supply a comprehensive and verifiable list despite having been given sufficient opportunity by AO, therefore, this ground raised by the assessee should be dismissed.

14. We have heard both the parties and perused the material available on record. We note that there is merit in the submission of the Id. Counsel for the assessee, as he pointed out that to reconcile the gross purchase as per HUL account which is shown in column No. B, vide para 3.4.11 of the Assessing officer's order, where the Assessing Officer did not provide the figures to the assessee in respect of column No. B of the table which is given in para 3.4.11 of the Assessment order. Therefore, the assessee could not reply properly and could not substantiate his *bonafide* during the assessment stage. Hence, the Id. Counsel for the assessee requested the Bench to remit this issue to the file of the Assessing Officer to reconcile the difference in column No. B of the table given in para no. 3.4.11 of the Assessment order. The Id. DR has also fairly agreed with the submissions of the counsel. We note that the Assessing Officer has not provided the information which is given in column No. B, vide para 3.4.11 of the Assessment order. Therefore, we direct the Assessing Officer to provide information to the assessee which is given in column No. B, vide para 3.4.11 of the Assessment order and in turn the assessee should submit the reconciliation and required document to

substantiate his *bonafide*. Therefore, statistical purposes the ground No. 5 raised by the assessee is treated to be allowed.

15. Ground No. 6 raised by the assessee relates to addition of Rs. 3,71,996/- on account of cash receipts.

16. The brief facts qua the issue are that the AO has observed that on 9.4.2010, the cash book of the assessee was debited by Rs.6,67,310/- on account of cash received against sale bill, although the maximum cash collection that could have been effected of debtors and sales made during the day was Rs.5,81,048/-. The A.O has therefore concluded that an amount of Rs.86,262/- was introduced into business on that day. Similar were the conclusions for amounts of Rs.2,08,580/- on 01.05.2010 and Rs.77,154/- on 03.05.2010. These add to Rs3,71,996/- which the AO has held as having been introduced from undisclosed source.

During the assessment stage, nothing has been brought on record to contradict the findings of the A.O., except for stating that the same amount was collected as per demand of materials and the bills were sent in the next few days. However, no documentary evidence has been submitted in this matter, therefore AO made addition of Rs.3,71,996/-.

17. We have heard both the parties and perused the material available on record. We note that during the course of hearing the Id. Counsel for the assessee pointed out that annexure-B referred by the Assessing Officer had not been provided to the assessee, therefore, there is a difference in cash books which is to be explained by the assessee. The Id. DR seems to be fairly agreed with the counsel for the assessee. We note that considering the principle of natural justice and fair play, we think it appropriate to remit this issue back to the file of the Assessing Officer with the direction that Assessing Officer should provide the information given in annexure-B to the assessee. We also direct the assessee to provide the required details and information after getting the annexure B from AO, to substantiate his

bonafide. Statistical purposes the ground No. 6 raised by the assessee is treated to be allowed.

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

Order pronounced in the Court on 08.03.2019

Sd/-
(A.T.VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 08/03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. Amiya Kumar Samanta
2. ITO, Ward-34(2), Kolkata
3. C.I.T(A)-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.
4. C.I.T.- Kolkata.

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By Order

Assistant Registrar
ITAT, Kolkata Benches