

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 843 & 844/JP/2017
निर्धारण वर्ष/Assessment Year : 2010-11 & 2011-12

M/s Venus Footarts Limited, F-126 to F-128, Industrial Area, Neem Ka Thana, Sikar	बनाम Vs.	The ACIT, Circle, Sikar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCV 2248 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by: Shri Vedant Agarwal (Adv.) &
Shri Manish Dhartidhanka (C.A.)
राजस्व की ओर से/ Revenue by : Smt. Roshanta Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 12/02/2019
उदघोषणा की तारीख/Date of Pronouncement: 06/03/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of the Id. CIT(A), Jaipur both dated 18.09.2017 for the assessment years 2010-11 & 2011-12 respectively. For the assessment year 2010-11, the assessee has raised following grounds:-

"1. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 45,000/-

made by Ld. A.O. on account of stores & spares exp. by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

2. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 43750/- made by Ld. A.O. on account of Traveling exp by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

3. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 47880/- made by Ld. A.O. on account of General exp by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

4. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 55,100/- made by Ld. A.O. on account of Motor Car exp by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

5. On the facts and circumstances of the case & in law also Ld. CIT(A) grossly erred in stating that AR did not file any rejoinder. In facts it was submitted before Ld. CIT(A) that reliance may kindly be placed on the written submission earlier filed as Ld. A.O. has not brought any new thing on the record.

2. Ground no. 1 is regarding disallowance of stores & spares expenses for want of supporting vouchers. The Assessing Officer observed that the assessee has debited a sum of Rs. 11,31,803/- under the head stores & spares. While verifying the bills and vouchers produced in support thereof the AO noted that some bills and vouchers pertaining to stores & spares were not verifiable. On further verification it was found that the assessee could not produce the supporting evidence to the extent of the expenses of Rs. 98,586/-. Accordingly, the AO has disallowed the stores & spares to extent of Rs. 98,586/- on the ground that it was not verifiable and not supported by proper and adequate evidence. On appeal, the Id. CIT(A) after considering the facts that assessee has made cash payment of Rs. 89,363/- of stores & spares expenses which was supported by self made vouchers restricted disallowance to Rs. 45,000/- and the remaining amount of Rs. 53,586/- was deleted.

3. Before us, the Id. AR of the assessee has submitted that the turnover of the assessee for the year under consideration is Rs. 68.70 Crore, therefore, the expenditure debited by the assessee under these head is very reasonable and not excessive. Further, the entire expenses has been incurred wholly and exclusively for business purpose.

Therefore, the adhoc disallowance made by the AO and sustained by the Id. CIT(A) is not justified. In support of his contention, he has relied upon the decision of Agra Bench of the Tribunal dated 15.02.2013 in case of M/s PNC Construction Co. Ltd. vs. DCIT in ITA No. 145/Agr/2012.

4. On the other hand, the Id. DR has submitted that assessee has failed to discharge its onus to substantiate its claim by producing supporting evidence. The assessee has not disputed the facts that there were cash payments in respect of stores & spares expenses and the assessee has produced only self made vouchers. He has relied upon the orders of the authorities below and submitted that the Id. CIT(A) has already granted substantial relief to the assessee.

5. We have considered the rival submissions as well as relevant material on record. The assessee has debited expenditure on account of stores & spares of more than Rs. 11.77 lacs out of which a sum of Rs. 89,363/- was paid in cash. The said claim of expenditure made in cash was supported by self made vouchers. Though the expenditure incurred in cash and supported by self made vouchers itself is not sufficient for disallowance if the assessee has established the facts that such expenditure was incurred in the peculiar circumstances and in emergent

condition where there was no other option but to make the payment in cash. However, in the case in hand all these expenditure on account of stores and spares claimed by the assessee are in respect of purchase made by the assessee from various shops in Jaipur and Delhi. Once, the assessee has claimed the expenditure in respect of purchase made from the shops at Jaipur and Delhi then even if the payment is made in cash the supporting verifiable vouchers should have been produced by the assessee instead of self made vouchers. Therefore, the payment made in cash and supported by self made vouchers in respect of purchase made from the shops at Jaipur and Delhi cannot be accepted as exceptional circumstances wherein the assessee was not having the option to get a proper bills/vouchers or making the payment other than cash. The decision relied by the Id. AR of the assessee in respect of the work got by the assessee in the remote rural for which the assessee made payment in cash. The Id. CIT(A) already granted a substantial relief on this account in para 4.3 as under:-

"4.3 I have carefully consider the material before me. I find that the AO made the addition that the appellant failed to file the supporting evidence of Rs. 98,586/- under the head of store and spare expenses. The AO in the remand report mentioned that on examination of record it was noticed that expenses of Rs. 59,771/- were incurred in cash out of total expenses of Rs.

11,31,803/- claimed in P. & L account under the head Stores & Spares expenses.

Thus it is found that the cash payment made of Rs. 89,363/- for stores & spares expenses which was supported by the self made vouchers. The appellant made the cheque payment of Rs. 10,72,032/- remaining expenses of stores & spares. The AO disallowed Rs. 98,586/- without any basis. The expenses related to self made vouchers only Rs. 89,363/-. Therefore, the disallowances made by the AO is unreasonable, unjustified and arbitrary. Hence, considering the facts of the case and nature of the expenses I restrict the disallowance only Rs. 45,000/- and balance amount of Rs. 53,586/- is deleted. This ground is partly allowed."

Therefore, the addition sustained by the Id. CIT(A) is about 50% that of made by the AO. Accordingly, in the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the Id. CIT(A).

6. Ground no. 2 is regarding disallowance made by the AO on account of unverifiable expenses. The AO noted that the assessee has claimed Rs. 3,76,687/- under the head of traveling expenses however, no evidence in support of the expenses of Rs. 43,750/- was produced by the assessee for verification. Accordingly, the AO disallowed the claim of traveling expenses to the extent of Rs. 43,750/-. On appeal, the Id. CIT(A) has confirmed the disallowance made by the AO.

7. Before us, the Id. AR of the assessee has submitted that the expenditure incurred by the assessee is wholly and exclusively for the business purpose. Further, when the expenses were not found excessive then, merely because the assessee could not produce proper vouchers for some of the expenditure, the same cannot be disallowed. He has reiterated his contention and relied upon the order of the Agra Bench of the Tribunal in case of M/s PNC Construction Co. Ltd. vs. DCIT (supra).

8. On the other hand, Id. DR has relied upon the orders of the authorities below and submitted that the assessee has not produced the supporting vouchers and also make the payment in cash, therefore, the assessee has failed to discharge its onus.

9. We have considered the rival submissions as well as relevant material on record. The Id. CIT(A) called for remand report from the AO. During the course of remand proceeding, the AO has again examined the claim and found that most of the expenses were incurred in cash. Further, some of the expense were supported only by self made vouchers and not supported by verifiable evidence. We find that the AO has made the disallowance of the expenditure only to the extent

which was incurred in cash and supported by self made vouchers. The Id. CIT(A) has considered this issue in para 5.3 reproduced as under:-

"I have carefully considered the material before me. I find from the remand report that most expenses incurred in cash out of travelling expenses. It is also found that some expenses supported only self made vouchers and not supported by adequate evidences. Thus, it is prove that expenses are not fully vouched. Therefore the action of the AO is justify to disallowed of Rs. 43750/- out of total expenses of travelling of Rs. 376687/-. Hence, I confirm the addition made by the A of Rs. 43750/-. This ground is not allowed."

Accordingly, once the assessee has failed to substantiate its claim by producing a verifiable supporting evidence and further the payment was made in cash then, the disallowance made by the AO and sustained by the Id. CIT(A) cannot be defaulted with. Hence, we uphold the order of the authorities below.

10. Ground no. 3 is regarding the addition made by the AO on account of general expenses. The assessee has debited a sum of Rs. 4,04,804/- under the general charges. The AO noted that the assessee could not produce any supporting evidence in respect of the amount of Rs. 47,880/-. Accordingly, the AO disallowed the general expenses to the extent of Rs. 47,880/- on the ground that it is not verifiable and not

supported by adequate evidence. On appeal, the Id. CIT(A) has confirmed the disallowance made by the AO.

11. Before us, the Id. AR of the assessee has submitted that the expenditure were incurred wholly and exclusively for the business purpose of the assessee and it is also not found to be excessive. Therefore even some of the expenses are supported self made vouchers the same cannot be disallowed once, the claim of the assessee is not found to be bogus.

12. On the other hand, the Id. DR has relied upon the orders of the authorities below.

13. We have considered the rival submissions as well as relevant material on record. We find that the general expenses as claimed by the assessee is only 0.06% of the turnover of the assessee. The nature of the expenditure claimed by the assessee and the amount is very petty in most of the cases as below as Rs. 50 incurred in respect of the miscellaneous daily use items as well as in respect of the services availed from various persons. Therefore, having regard to the nature of expenditure the payment made by the assessee in cash is not unusual. Nobody will accept such petty amount of Rs. 50/- other than cash.

Accordingly, having regard to the facts and circumstances of the case that the expenses are petty in nature and in respect of the daily use items as well as services availed from various persons the cash payment cannot be a ground for disallowas. The said expenditure is not found to be excessive then, the disallowance is not called for on the ground that some of the vouchers are not verifiable. Accordingly, the disallowance made by the AO on account of general charges is deleted.

14. Ground no. 4 is regarding addition made by the AO on account of motor car expenses. The AO has made disallowance of Rs. 55,100/- out of the total motor car expenses of Rs. 4,02,008/- on the ground that some of these expenses were incurred in cash and supported by self made vouchers. On appeal, the Id. CIT(A) has confirmed the disallowance made by the AO.

15. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. After going through the details of the expenditure incurred on motor car we find that the entire expenditure claimed by the assessee is in respect of fuel (petrol and diesel). As per ledger account the assessee has given all the details of fuel expenses, vouchers and most of the expenses were supported by the bills of the petrol pump. Therefore, when the AO has not found any unusual or

excessive expenditure on account of fuel during the year under consideration then, disallowance is unjustified. Even otherwise the fuel expenditure is verifiable from the counterpart and was not found to be excessive or bogus. Accordingly, disallowances made by the AO on account of motor car expenses and specifically fuel expenses are deleted.

16. For the assessment year 2011-12, the assessee has raised following grounds:-

"1. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 28,000/- made by Ld. A.O. on account of sales & administrative exp by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

2. On the facts & circumstances of the case & in law also Ld. CIT(A) grossly erred in confirming the addition of Rs. 43593/- made by Ld. A.O. on account of general charges by rejecting the explanation filed the assessee before Ld. A.O. as well before CIT(A).

3. On the facts and circumstances of the case & in law also Ld. CIT(A) grossly erred in stating that AR did not file any rejoinder. In facts it was submitted before ld. CIT(A) that reliance may

kindly be placed on the written submission earlier filed as Id. A.O. has not brought any new thing on the record.

17. Ground no. 1 is regarding disallowance of sales and administrative expenses. The AO noted that the assessee has debited Rs. 26,99,977/- under the head sales and administrative expenses which includes the expenses on account of stores and spares. The AO noted that the expenditure to the extent of Rs. 56,067/- which on account of stores and spares was not verifiable as the assessee has not produce the proper vouchers. On appeal, the Id.CIT(A) has restricted the disallowed of Rs. 28,000/-.

18. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. This issue is common as raised by the assessee for the assessment year 2010-11 in ground no. 1. In view of our finding on this issue for the assessment year 2010-11 the disallowance sustained by the Id. CIT(A) is upheld.

19. Ground no. 2 is regarding addition made on account of general charges. The AO has made disallowance of Rs. 43,593/- under the head general charges for want of proper bills and vouchers. This issue is identical in the appeal for the assessment year 2010-11 in ground no. 3.

In view of our finding for the assessment year 2010-11 on this issue the disallowance made by the AO is deleted.

In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 06/03/2019

Sd/-
(रमेश सी० शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2019.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Venus Footarts Limited, Sikar.
2. प्रत्यर्थी / The Respondent- ACIT, Circle, Sikar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 843 & 844/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar