

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 861/JP/2018
निर्धारण वर्ष/Assessment Year : 2012-13.

M/s. Dhabriya Agglomerates Pvt. Ltd. B-9 D(1), Malviya Industrial Area, Jaipur.	बनाम Vs.	The DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AACCD 5090 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri Nikhilesh Kataria (CA)
राजस्व की ओर से/ Revenue by: Shri Ashok Khanna (JCIT)

सुनवाई की तारीख/ Date of Hearing : 18.03.2019.

घोषणा की तारीख/ Date of Pronouncement : 20/03/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 21st May, 2018 of Id. CIT (A)-2, Jaipur for the assessment year 2012-13. The assessee has raised the following grounds :-

1. The assessment order passed u/s 143(3) is bad in law as well as on facts and hence the same may please be quashed.
2. Rs. 7,71,633/- : The Id. AO erred in law as well as on the facts of the present case in disallowing EPF & ESI though the same was duly paid before the due date of filing of return and the Id. CIT (A) erred in sustaining the same.

3. Rs. 2,49,966/-: the Id. AO erred in law as well as on the facts of the present case in making disallowance on account of unverifiable expenses and the Id. CIT (A) erred in sustaining the same."

Ground No. 1 is regarding validity of assessment order passed under section 143(3) .

2. At the time of hearing, the Id. Counsel for the assessee has stated at Bar that the assessee does not press ground no. 1 and the same may be dismissed as not pressed. The Id. D/R has raised no objection if ground no. 1 of the assessee is dismissed as not pressed. Accordingly, ground no. 1 of the assessee's appeal is dismissed being not pressed.

Ground No. 2 is regarding disallowance of employees' contribution to EPF & ESI as the same was not paid before the due date of the respective Acts but was paid before the due date of filing of return of income.

3. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. At the outset, we note that once the assessee has paid the employees contribution to ESI and EPF before the due date of filing of return under section 139(1), then the same cannot be disallowed in view of the binding precedent of Hon'ble Jurisdictional High Court including the decision in case of CIT vs. SBBJ, 99 DTR 131 (Raj.). The Id. CIT (Appeals) has confirmed the disallowance by purportedly following the decision of Hon'ble Jurisdictional High Court dated 13th March, 2018 in case of Rajasthan Renewable Energy Corporation Ltd. in DBIT Appeal Nos. 10-12/2018. It is pertinent to note that even the said decision is not against the assessee but there is a typographical mistake in the concluding para of the

decision. The Id. CIT (A) has misunderstood the said decision. For ready reference, we reproduce the decision of the Hon'ble Jurisdictional High Court in para 6 as under

:-

"6. With regard to issue No. 2 and 3 the controversy is pending before the Supreme Court in C.I.T., Jaipur vs/ Ms State Bank of Bikaner and Jaipur in SLP (c) No. 16249/2014, therefore, subject to decision of SLP, for the present, these issues are decided on in favour of the department and against the assessee. It will be open for the department to recover the amount if the decision is in their favour."

Thus it is clear that the Hon'ble Jurisdictional High Court has followed the earlier decision in case of CIT vs. SBBJ. However, there is an apparent typographical mistake wherein the issue is stated to have been decided in favour of the department and against the assessee but in the last sentence it was again made clear that it will be open for the department to recover the amount if the decision is in their favour, which clearly shows that the issue was in fact decided in favour of the assessee and since the SLP was pending before the Hon'ble Supreme Court and in the event the issue is decided in favour of the revenue, the revenue can recover the taxes. We further note that in case of Pr. CIT vs. Rajasthan Ex-Servicemen Corporation Ltd. in DBIT Aooeal No. 7/2018, the Hon'ble Jurisdictional High Court has again considered this issue in para 3 & 4 as under :-

"3. The facts of the case are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 22/11/2016. While framing the assessment

the Assessing Officer noticed that the assessee has deposited employees contribution towards PF and ESI after due date of payment. Therefore, he made disallowance of Rs. 6,60,27,182/-. Aggrieved by this, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions and relying upon the judgment of the Rajasthan High Court in the case of CIT vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131 (Raj.) deleted the disallowance.

4. Regarding both the issues relating to PF & ESI, the controversy is pending before the Supreme Court in SLP No. 16249/2014 (The State of Rajasthan CIT, Jaipur vs. M/s. State Bank of Bikaner and Jaipur), hence the issues are decided subject to SLP."

Therefore, in view of the earlier decision which was followed by the Hon'ble High Court in these two decisions, the issue is covered by the binding precedent of Hon'ble Jurisdictional High Court, hence the disallowance made by the AO and confirmed by the Id. CIT (A) is deleted.

Ground No. 3 is regarding adhoc disallowance made by the AO on account of unverifiable expenses.

4. The AO while passing the scrutiny assessment has made disallowance of 10% of various expenditures on account of unverifiable vouchers being self-made as well as the element of personal use. The assessee challenged the action of the Id. CIT (A), however, the Id. CIT (A) has confirmed the disallowance made by the AO on the similar reasoning that most of the payments were made in cash and further the personal element in this expenditure could not be ruled out.

5. Before us, the Id. A/R has submitted that the assessee has produced all the relevant bills and vouchers though due to the nature of expenditures, some of the expenditures were incurred in cash for which self-made vouchers were produced by

the assessee. However, when the expenditure is not found to be excessive and incurred wholly and exclusively for the purposes of business then the adhoc disallowance is not permissible. The Id. A/R has further contended that the assessee is a company and, therefore, disallowance cannot be made on account of personal element or use. He has relied upon the decision of this Tribunal dated 31st May, 2017 in case of M/s. S.R. Proteins Pvt. Ltd. vs. DCIT in ITA No. 978/JP/2016 and submitted that the Tribunal has held that adhoc disallowance merely on suspicion is not permissible in absence of any evidence or material to support the reason of disallowance. Alternatively the Id. A/R has pleaded that 10% adhoc disallowance is on higher side and the same may be restricted to 5%, if at all the disallowance is confirmed.

6. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the AO has given the reason that the expenditure on account vehicle repair & maintenance, telephone expenses, office expenses and conveyance expenses were not fully verifiable as the assessee has made the payment in cash and self-made vouchers were produced. Thus 10% disallowance made by the AO is very reasonable.

7. We have considered the rival submissions as well as the relevant material on record. The AO has taken up the four items of expenditures for the purpose of verification, the details of which are as under :-

S.No.	Item	Expenses claimed
1.	Vehicle repair & maintenance expenses	Rs. 5,86,492.00
2.	Telephone expenses	Rs. 9,67,451.00
3.	Office expenses	Rs. 4,82,953.00
4.	Conveyance expenses	Rs. 24,99,664.00

Thus the AO proposed to make disallowance on account of Vehicle repair & maintenance expenses, Telephone expenses, Office expenses and Conveyance expenses. The AO finally made the disallowance of 10% on account of lack of supporting verifiable evidence as well as element of personal use. At the outset, we find that the reason of disallowance being element of personal use is not sustainable when the assessee is a company and all the expenditures were incurred in respect of the business of the assessee. Even if there is a use other than the business, the same has to be established from the record and not on the basis of surmises and conjectures. The suspicion and doubt cannot be a ground for disallowance of expenditure when the AO has not found the claim of the assessee either excessive or bogus. Further, so far as the telephone expenses are concerned, it is always supported by bills raised by the service provider and, therefore, it cannot be treated as an expenditure without supporting evidence. The telephone expenses are otherwise verifiable from independent source as the same are based on the bills raised by the service provider. The AO has not raised any objection about the telephone expenses beyond the bills raised by the service provider. Therefore, the adhoc disallowance made by the AO of telephone expenses is not sustainable and the same is deleted.

7.1. As regards the other expenditures on account of vehicle repair & maintenance, office expenses and conveyance expenses, we find that the AO has supported his decision on two counts one is unverifiable evidence and second is personal use. Since the assessee is a company and the expenditures are incurred for the purpose of business, the same cannot be disallowed on the basis of a doubt of personal use. Therefore, the said ground of disallowance is not sustainable. As

regards the verifiable supporting evidence to substantiate the claim, we find that the assessee has not disputed the fact of the payments made in cash and production of self-made vouchers. Accordingly, in the facts and circumstances of the case, we restrict the disallowance to 5% as against 10% made by the AO in respect of expenditures incurred on account of vehicle repair & maintenance, office expenses and conveyance expenses. This ground is partly allowed.

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

Order is pronounced in the open court on 20/03/2019.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 20/03/2019.

Das/

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

1. The Appellant- M/s. Dhabriya Agglomerates P. Ltd., Jaipur.
2. The Respondent – The DCIT, Circle-6, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 861/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

