

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' JAIPUR

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

आयकर अपील सं./ITA No. 1515/JP/2018
निर्धारण वर्ष/Assessment Year :2013-14

Shri Shrishail Rana, E-73, Chitranjan Marg, C-Scheme, Jaipur	बनाम Vs.	Income-tax Officer, Ward-6(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACBPR4202J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Tanuj Agarwal (Adv.)
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna (JCIT)

सुनवाई की तारीख/ Date of Hearing : 18/03/2019
उदघोषणा की तारीख/ Date of Pronouncement: 12/04/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 20.11.2018 for AY 2013-14 wherein the assessee has taken the following ground of appeal:

"That on the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in sustaining disallowance of expenditure of M/s Systweak Inc. to the extent of Rs. 32,51,310/- as excessive merely on surmises and conjectures thereby ignoring all the material evidences on record."

2. Briefly stated, the facts of case are that the assessee is engaged in the business of developing and export of computer software in the name and style of M/s Systweak Inc. and M/s Systweak Software. M/s Systweak Software is eligible for deduction u/s 10AA of the Act, however M/s

Systweak Inc, is not eligible for deduction u/s 10AA of the Act. During the course of assessment proceedings, the Assessing Officer observed that looking at the turnover of M/s Systweak Inc for the last 3 years including the current year, the expenses have been debited on higher side as percentage of turnover. Referring to the programme expenses of Rs. 38,90,527/-, the Assessing Officer observed that the assessee failed to furnish the name and address of the persons to whom the amount has been paid and on what account this amount has been paid and thus, the expenses remained unverifiable and hence, cannot be considered to be genuine. Similarly, in respect of customer support charges of Rs. 16,38,000/- and computer software expenses of Rs. 29,88,207/-, the Assessing Officer observed that the assessee has filed mere submission without production of any evidence in its support and it was accordingly held by the AO that the expenses claimed by the assessee in his proprietorship concern M/s Systweak Inc. are not subject to verification. Some of the expenses are unvouched or expenses have been claimed on self-made vouchers, therefore, verification of the same are not possible. As per Assessing Officer, the assessee has to give evidence to show that the expenditure has actually been incurred by him and the same is for genuine business needs and assessee should have provided the correct addresses of the persons to whom the payments were made, so that the same may be verified. Given that the abnormal expenses have been claimed and the assessee has failed to prove the genuineness of the expenses, a show-cause was accordingly issued to the assessee on 14.03.2016 to explain the excess expenses claimed in Systweak Inc. especially program expenses, computer software and customer support expenses etc. failing which case would be decided on the basis of material available on record as the loss claimed in M/s Systweak Inc is not appropriate in the fitness of the things. In response, the assessee

submitted that both the units, Systweak Software and Systweak Inc are entirely separate and there are no connection with each other hence no expenses have interchanged and computation has rightly been made. The assessee further supported his contentions on the basis of expenses, bank accounts, approving authorities, Custom Bonded Area and location, overseas clients, employees, separate accounts etc. The written submission so filed by the assessee were considered, however, the same were not found tenable by the Assessing officer. Further, the AO referred to the loss incurred by the assessee during the period relevant to A.Y 2012-13 which was disallowed by the then AO. It was held by the AO that the assessee has claimed excessive expenditure than the turnover by an amount of Rs. 32,51,310/-. Further, the assessee has also failed to substantiate the specific expenses such as Program Expenses, Computer software, customer support expenses etc in the concern Systweak Inc and accordingly, expenses to the extent of Rs. 32,51,310/- claimed by the assessee over and above the turnover in M/s Systweak Inc. was disallowed, which in turn results in disallowance of loss of Rs 32,51,310 claimed by the assessee in hands of M/s Systweak Inc.

3. Being aggrieved, the assessee carried the matter in appeal before Id. CIT(A) who has confirmed the finding of the Assessing Officer and held that since the assessee has failed to substantiate the claim made in respect of extra-ordinary high expenditures, therefore, the AO has rightly disallowed the expenses of Rs. 32,51,310/-. Against the said finding, the assessee is now in appeal before us.

4. During the course of hearing, the Id. AR submitted that all the material evidences together with the books of accounts audited by a Chartered Accountant were verified by the AO during the course of the assessment proceedings but not a single specific instance/defects was pointed out by him in the books of account maintained nor did he brought on record any single

instance of inflation of expenditure. It was accordingly submitted that merely on surmises and conjectures, the Id. AO made arbitrary disallowance of expenditure to the extent of Rs. 32.51 lakhs and that too without even specifying that how much is being disallowed out of which expenditure head. It was submitted that imports from outside India constitute major expenditure and almost the entire expenditure is incurred through the banking channels and tax has been deducted at source wherever applicable. It was further submitted that the details of program development expenses, customer support charges and computer software expenses were duly submitted during the course of assessment proceedings. It was submitted that the programme development expenses relates to purchase of the small programmes (Codes) for our products through credit cards, the customer support charges are the expenses which are carried out to support the customers to whom we have already exported the softwares and computer software relates to purchase of small softwares which facilitates exports from India. It was submitted that the expenditure in the software development industry is of fixed nature and do not directly vary with regard to the variations in turnover. It was further submitted that the yardstick for incurring any expenditure for business has to be judged from businessman point of view and the AO cannot step into the shoes of the businessman and determine the necessity of incurring any expenditure. It was further submitted that in AY 2006-07, on similarly facts, the expenses have been disallowed by the Assessing Officer which were deleted by the Id. CIT(A). Regarding disallowance of the expenditure in AY 2012-13, on appeal, Id. CIT(A) restricted the disallowance to Rs. 5,00,000/- out of telephone and travelling expenditure and no further appeal has been filed by the Revenue against the said Id. CIT(A). It was further submitted that in the subsequent AY 2014-15, the assessment was framed by the Id. AO u/s 143(3) accepting the entire declared income without making any addition/disallowance. It was accordingly submitted that even the past history of the assessee has been completely

ignored by the Assessing Officer while framing the assessment for the year under consideration.

5. The Id DR is heard who has relied on the findings of the lower authorities which we have already noted above and hence, not discussed again for the sake of brevity.

6. Heard both the parties and pursued the material available on record. In our view, what has to be seen is whether the expenditure so claimed by the assessee has the necessary nexus with the business of the assessee or not and whether such expenditure has been incurred for the purposes of the business of the assessee. In the instant case, we find that it is not the case of the Revenue authorities that the expenditure has not been incurred for the purposes of the business of export of computer software. The case of the Revenue is that there is an increase in expenditure as a percentage of turnover over the previous years and the given that the same is not verifiable, excess of expenditure over revenues have been disallowed. In our view, an increase in the expenditure could be a good starting point for carrying out further examination of the expenses so claimed by the assessee, however, the same cannot be a basis for disallowance of the expenses so claimed by the assessee. Further, the assessee has produced details of the program development expenses, customer support charges and computer software expenses so called for during the course of assessment proceedings in respect of M/s Systweak Inc and no specific defect has been pointed by the AO or the Id CIT(A). Further, the AO has relied on the findings of his predecessor who has disallowed loss in AY 2012-13 which has already been deleted by the Id CIT(A) and the Revenue is not in appeal against the said findings of the Id CIT(A). In our view, the findings of the AO regarding non-genuineness of expenditure and disallowance of loss is self-contradictory given that the loss is excess of expenditure over the revenues. The AO has accepted the revenues and has

accepted part of the expenditure. Once a part of the expenditure has been accepted, unless and until specific instances of expenditure which are bogus in nature or held to be not incurred for the purposes of the business are segregated, it is incorrect to hold a part of the expenditure falling in the same head as allowable and a part of the expenditure as not allowable. Further, the assessee has carried out its business activities during the year and therefore, there cannot be any basis to hold that the loss so incurred while carrying out its business activities won't be allowed. In the entirety of facts and circumstances, we do not see any justifiable basis to uphold the action of the Assessing officer who has arbitrarily disallowed the loss so incurred by the assessee. In the result, we delete the disallowance so made by the Assessing officer and the ground of appeal so taken by the assessee is hereby allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 12/04/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 12/04/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Shrishail Rana, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward-6(4), Jaipur
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. 1515/JP/2018}

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

