

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "C", BANGALORE
BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
AND
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.245(Bang)/2017
(Assessment Year : 2012-13)**

Shri Pradeep Kumar Solanki(HUF),
No.63, Thrinetra Apartments, Ground Floor,
15th Cross, Temple Road, Malleshwaram,
Bangalore-560 003
PANNo.AAIHP3180L

Appellant

Vs

The Addl. Commissioner of Income tax,
Range-2(2),
Bangalore

Respondent

**Appellant by : Shri V. Srinivasan, Advocate
Revenue by : Shri P.Dhivahar, Addl. CIT**

Date of hearing : 27-06-2019

Date of pronouncement :

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeal has been filed by assessee against order dated 08/12/16 passed by Ld. CIT (A)-2, Bengaluru, for assessment year 2012-13 on following grounds of appeal:

"1. The orders of the authorities below in so far as they are against the appellant are opposed to la, equity, weight

of evidence, probabilities, facts and circumstances of the case.

2. The invocation of the provisions of sections 143(2) of the Act is bad in law as there is no material inducing the reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible to issue notice u/s 143(2) and consequently, the final assessment made is bad in law and liable to be annulled.

3. The ld. CIT(A) is not justified in upholding the disallowance of a sum of Rs.11,52,385/- being the sales promotion expenses under the facts and in the circumstances of the appellant's case. The disallowance is purely on suspicion and surmise, assumptions and presumptions and deserves to be deleted.

3.1 Without prejudice to the above, the disallowance made is excessive and liable to be reduced substantially.

4. Without prejudice to the right to seek waiver with Hon'ble CCIT/DG the appellant denies himself liable to be charged to interest u/s 234A and 234B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

2. Brief facts of the case are as under:

Assessee filed its return of income for year under consideration declaring total income of Rs.22,19,000/- on 28/09/12. The return was processed under section 143 (1) of the IT Act, and subsequently taken up for scrutiny. Followed by which notice under section 142 (1) of the IT Act, 1961 was issued along with questionnaire and notice under section 143 (2) of the Act. In response to statutory

notices, representative of assessee appeared before Ld.AO and submitted information as called for.

3. Ld.AO observed that assessee declared sales turnover of Rs. 55.34 crores for year under consideration, on which gross profit of Rs.1.26 crore was declared. Assessing officer accepted low profit percentage declared by assessee and explanation in respect of the same. It was observed that assessee paid commission which was called upon to be explained by Ld.AO. In response assessee filed various details wherein, he made expenses towards sales promotion. Ld.AO observed that assessee paid sum of Rs.2,09,300/- to the supplier of pens in Mumbai which was used to distribute amongst its client as sales promotion. Ld.AO recorded that, no documents were produced for transporting alleged gift items to client places and therefore entire sales promotion expenses was treated as bogus unwarranted and frivolous. He thus added commission paid to three persons as no details were filed by assessee and also disallowed sales promotion expenses made by assessee.

4. Aggrieved by additions made by Ld.AO, assessee preferred appeal before Ld.CIT (A) who gave part relief to assessee by deleting is the addition made on account of commission paid by assessee. However Ld.CIT (A) confirmed addition made on account of disallowance of sales promotion expenses.

5. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

6. Ld.AR at the outset submitted that **Ground No. 1** is general in nature and therefore do not require any adjudication. He submitted that **Ground No. 2**, assessee do not wish to press and therefore is on instructions the said ground has been withdrawn. Accordingly, **Ground No. 2** stands dismissed as withdrawn. The only effective ground as submitted by Ld.AR raised **Ground No. 3 and 3.1** which has been raised in respect of disallowance of sales promotion expenses amounting to Rs.11,52,385/-.

7. Ld. AR submitted that assessing officer did not raise any query regarding evidences that assessee needs to be adduced in respect of sales promotion expenses and without giving proper opportunity made the additions. He submitted that assessee has relevant documents to establish that expenses were genuine in nature. Ld.AR submitted that on one breath assessing officer accepts low GP offered by assessee, however on the other hand expenses claimed by assessee is considered to be bad, non-genuine and bogus, which is contrary to each other.

7.1 On the contrary, Ld. DR has submitted that in the event assessee has sufficient details to establish its claim the issue may be set aside to Ld. AO for due verification of the same.

8. We have perused submissions advanced by both sides in the light of the records placed before us.

8.1 It is observed that assessee has made expenses towards purchase of mobile phones perfumes and pence etc., to be distributed to its clients in Kolkata as sales promotion gesture. As

no details were furnished in regards to supply to his clients, disallowance was made by Ld. AO. Ld. AR now submits that it he has all the details which could establish its claim of expenses. Under such circumstances we deem it proper to set aside this issue to Ld. AO for due verification of all details filed by assessee and to consider the claim in accordance with law. Needless to say that assessee shall be granted proper opportunity to represent its case before Ld. AO and assessing officer shall carry out all necessary investigation in order to ascertained nature of expenses. With the above directions we set aside this issue back to Ld. AO.

9. Accordingly **Ground 3 and 3.1** stands allowed for statistical purposes.

10. **Ground No.4** raised by assessee is in respect of interest under section 234A and B of the Act which is premature at this stage and therefore do not require any adjudication.

11. **Ground No. 5** is again general in nature

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open court on

(A.K.GARODIA)
ACCOUNTANT MEMBER

(BEENA PILLAI)
JUDICIAL MEMBER

Dated: the

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asstt.Registrar