

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.185/Del/2018
(Assessment Year: 2010-11)

Biotrobnik Medical Devices India P. ltd, Unit No. 805-807, 8 th Floor, Commercial Complex, DLF Tower-B, Jasola, New Delhi PAN: AADCB1386Q (Appellant)	Vs.	DCIT, Circle-3(1), New Delhi (Respondent)
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Assessee by :	Shri Sumit Lal Chandani, Adv Shri Salil Kapoor, Adv Ms. Ananya Kapoor, Adv
Revenue by:	Smt Naina Soin Kapil, Sr. DR
Date of Hearing	29/04/2019
Date of pronouncement	18/07/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) – 2, New Delhi dated 23/10/2017 raising following grounds of appeal:-

- “1. Lower Authorities have grossly erred in passing/ confirming orders which are based on hypothetical grounds, are bad in law, are against provision of Income Tax Act and are against law of natural justice and facts of the case,
2. Lower Authorities have grossly erred in making/ confirming addition of:-
 - i. Rs. 1,30,000/- by disallowing written off amount treated as bad debts in books being compensation paid to distributor , expense was for business needs and exigency of Appellate.
 - ii. Rs.80,52,355/- out of advertisement expenses by treating the same as deferred revenue expenditure or expenditure of enduring benefit without understanding the nature of expenditure or business needs of Appellate.
 - iii. Rs. 13,32,095/- out of travelling and conveyance expenses without understanding the nature of expenditure or business needs of Appellate on hypothetical grounds.

iv. Rs. 5,53,05,206/- out of various expenses on ground that there is fall in GP ratio/NP ratio, without considering submissions of Appellate and also considering fact that TPO has accepted the net results of Appellate in TP Assessment.

All the above additions are totally hypothetical, based on conjectures & surmises, without any basis, are illegal, bad in law, against Income Tax Act, against facts & circumstances of the case, ignoring the submissions made by Appellate and also against law of natural justice, need to be deleted by your Honours.”

2. Brief facts shows that Assessee Company deals in life-saving medical devices/equipments. The company is importing this material from Berlin and has filed its return of income at Rs. 21154731/-. The assessment u/s 143 (3) of the act was passed on 28/3/2014 determining the total income of the assessee at INR 8 6184615/- wherein certain additions and disallowances been made. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A who partly allowed the appeal but confirmed certain disallowances against which the assessee is in appeal before us.
3. The first ground of appeal is general in nature, no arguments were advanced against the same, and therefore it is dismissed.
4. The second ground of appeal is with respect to the several disallowances, which are dealt with separately.
5. The learned CIT – A has confirmed the disallowance of INR 1 30000/- of written off amount treated as bad debts in books of accounts being compensation paid to distributor and expenses for business needs and exigency of the appellant. The brief fact shows that the learned assessing officer noted that that appellant had written of bad debts amounting to INR 1 69140/-. The justification of bad debt was given by the assessee by filing the detail which showed that a sum of INR 1 30000 was written off from absolute life care with the remarks this was as a compensation to the distributor as part of full and final settlement but book that as bad debts written off. From the above the learned assessing officer noted that compensation is not allowable as deduction u/s 36 of the income tax act and therefore the disallowance was made.
6. The matter travelled to the learned CIT – A who confirmed the disallowance under section 36 of the income tax act as well as u/s 37 (1) of the act. Therefore, assessee is in appeal before us.

7. The learned authorised representative submitted the details at per page number 79 of the paper book and submitted that this amount is paid as a compensation to the distribution is a part of full and final settlement but book that as bad debts written off. The memorandum of the understanding with the above party was also enclosed by the assessee in the paper book and vehemently supported by the learned authorised representative. Therefore it was contended that it is allowable as deduction u/s 37 (1) of the income tax act as of the above compensation has been incurred by the assessee is wholly and exclusively for the purposes of the business.
8. The learned departmental representative vehemently supported the order of the lower authorities and submitted that assessee has disguised nature of payment which has been examined by the learned CIT – A and confirmed the disallowance.
9. We have carefully considered the rival contention and perused the orders of the lower authorities. The assessee has entered into a memorandum of understanding dated 6th day of February 2010 wherein the assessee has paid a compensation of INR 1 30000/- to Messer Absolute Life Care for taking an undertaking that it shall not interfere by any means in the appointment of the distributor by the 2nd party and shall also not stake claim to be appointed as distributor. Absolute Life Care has also undertaken and accepted this amount which an undertaking that it shall not raise any dispute in future arising out of or making any claim against the 2nd party of any nature. It is further undertaken by him that it shall not approach any doctor or any third person with respect to the product of second party, assessee, and it will not make any complaint against the assessee. The recipient of the income is also issued an objection certificate to the assessee that it has no objection if assessee appoints any company from a person as its authorised distributor for the territory of Bihar or any other territory. It was also agreed that if the recipient of the above sum fails to adhere to the any of the terms and conditions of the contract he should be liable to pay the assessee-liquidated damages of INR 260,000 along with 24% interest per annum on the above amount. This clearly shows that the above party was one of the distributor of the Bihar region of the assessee. The above liability for payment has arisen during the year, as the agreement

is dated 6th day of February 2010. In view of this though above sum is not a bad debt but the compensation paid by the assessee, which has accrued during the year as a liability on the assessee and it has been paid. It is also not the case of the AO that above sum is paid for infraction of any of the laws. In view of the above facts, the above expenditure has been wholly and exclusively incurred by the assessee for the purposes of the business and therefore it is allowable u/s 37 (1) of the income tax act. The learned CIT – A has not considered the above aspect and confirmed the disallowance. In view of this, we reverse the order of the learned CIT – capital and direct the learned assessing officer to grant deduction of the above sum to the assessee. Accordingly ground number 2 (1) of the act is allowed.

10. The second issue is with respect to the disallowance of advertisement expenses of INR 8 052355/- disallowed by the learned assessing officer considering it as a deferred revenue expenditure on expenditure resulting into enduring benefit. During the year the assessee has incurred the advertisement and sales promotion expenses of INR 1 0065444/-. The assessee was asked to furnish the details of the same, which was furnished by the assessee however, the learned assessing officer held that if the benefit of incurring these expenditure is stretched over number of years than that expenditure can be amortized over a number of years. Accordingly the amount of INR 2 013089/- being 20% of INR 1 0065444/- was allowed to the assessee and the balance amount of INR 8 052355/- was disallowed. On appeal before the learned CIT – A the disallowance was confirmed.
11. The learned authorised representative submitted that all these expenditure have been incurred by the assessee for the purposes of the business. He submitted that these are the routine expenditure incurred by the assessee and there is no enduring benefit available to the assessee. He further stated that identical issue arose in the assessment year 2008-09 in case of the assessee wherein the ITAT as per order dated 30/6/2014 has allowed the claim of the assessee.
12. The learned departmental representative supported the orders of the lower authorities.

13. We have carefully considered the rival contentions and perused the orders of the lower authorities. The identical issue arose in ITA number 1263/del/2013 for assessment year 2008 – 09 wherein the learned assessing officer held that advertisement expenditure of INR to 119499/- is a capital expenditure resulting into enduring benefit. For that year the learned CIT – A deleted the above addition. The matter reached to the coordinate bench. The coordinate bench as per para number 10 of that order has allowed the claim of the assessee confirming the order of the learned CIT – A that heavy expenditure and sales promotion was incurred because of the initial years of the company. Therefore, there is no justification for spreading over of the revenue expenditure, which is not disputed over the years. It was further held that the claim of the assessee is squarely covered by the various decisions relied upon by the learned CIT – A such as CIT vs. city financial consumer finance Ltd 335 ITR 29, Amar raja Batteries Limited vs. ACIT 91 ITD 280 et cetera. Even otherwise, it is not the claim of the lower authorities that the assessee has incurred the advertisement and sales promotion expenditure not for the purposes of the business of such expenditure are in genuine. The only claim of the learned assessing officer is that the assessee has incurred huge expenditure and therefore it has resulted into enduring benefit. No such enduring benefit has been defined by the revenue authorities. The claim of the assessee is that these are the routine expenditure incurred by the assessee and therefore they cannot be disallowed. In view of the decision of the coordinate bench in assessee's own case for earlier years, we reverse the order of the lower authorities and direct the learned assessing officer to delete the disallowance of INR 8 052355/-. Accordingly ground number 2 (2) of the appeal is allowed.
14. The third issue in appeal is with respect to the disallowance of travelling and conveyance expenses of INR 1 332095/- disallowed by the learned assessing officer holding that 25% of the total expenses are disallowable in absence of the details filed. The brief fact shows that during the year the assessee company claimed travelling and conveyance expenses amounting to INR 1 0129983/-. The assessee was asked to furnish the details of the foreign tour expenses during the period. The assessee filed details of

travelling and conveyance expenses on perusal of those details it was found that assessee has debited a sum of INR 2 41023/- on foreign travel of doctors. The assessee company has not been able to substantiate the expenses incurred for the business purposes and therefore the learned assessing officer disallowed the same. With respect to the conveyance expenditure and travelling expenditure, assessee could not file any details regarding the nature of these expenses and for the purpose of such expenses for which it has incurred and therefore the learned assessing officer disallowed 25% of those expenditure. The assessee preferred an appeal before the learned CIT – A who confirmed the disallowance.

15. Before us, the assessee submitted that assessee has submitted the complete Ledger account of the travelling expenditure, ledger accounts of entertainment expenditure and Ledger account of the local conveyance expenditure. In absence of any defect in these details, it was stated that the learned assessing officer could not have say that there is no supporting evidences of the purposes have not been submitted by the assessee. In view of this, it is submitted that merely because the purpose of the each of the expenditure has not been mentioned the learned assessing officer should not have disallowed the ad hoc expenditure.
16. The learned departmental representative vehemently supported the order of the lower authorities.
17. We have carefully considered the rival contention and find that assessee has submitted the copy of the Ledger account of the travelling expenses for the whole year placed at page number 101 – 118 of the paper book. The narration given in the Ledger account clearly shows the purpose of those such expenditure. The travelling expenses are of small amounts considering to the nature of the business of the assessee. It is also specified the name of the person to whom it has been paid. Similarly, the assessee placed on record the details of the entertainment expenses at page number 119 – 138 of the paper book these expenditure are also very small amounts and the Ledger account shows the purpose for which they are incurred as well as the name of the person through which they have been incurred. These expenses have mostly been incurred through impressed account of the various staff. Therefore looking at to the nature of the business of the

assessee as well as the smallness of the amount and when the complete details are available in the Ledger account itself in the form of narration of those expenditure, it is not proper for the lower authority to disallow the above expenditure on ad hoc basis. Identically is the fact with respect to local conveyance expenditure for which the details are furnished by the assessee at page number 139 – 171 of the paper book. In view of this we reverse, the order of the lower authorities so far is with respect to disallowances of 25% of the total expenditure of INR 1 091072/- disallowed out of entertainment as well as the local conveyance expenditure. With respect to the disallowance of INR 2 41023/- even before us no information is provided and therefore the disallowance to that extent is confirmed. Accordingly ground number 2 (3) of the appeal is partly allowed.

18. The next issue is with respect to disallowance of INR 5 5305206/- out of various expenditure on the ground that there is a fall in gross profit ratio/net profit ratio of the assessee. From the details filed by the assessee it was seen by the learned assessing officer that expenses increased to the tune of approximately 40 percentage whereas the turnover of income has increased to the tune of approximately 20% only. Moreover, the gross profit ratio is the client from 36.02 percentage to 23.90 percentage of net profit ratio from 18.56 percentage 26.06 percentage. Further, the learned AO noted that cost price has increased and selling price has not increased. Therefore, the assessee was asked to explain the above situation. The assessee furnished explanation however the learned assessing officer noted that same is not tenable and therefore he disallowed only the 20% of the total expenditure incurred by the assessee out of purchase of traded goods, personal expenses, operating and other expenses and financial expenses totaling involved INR 2 55305206/-.
19. On appeal before the learned CIT – A, he dismissed and confirmed the above disallowance stating that despite specific queries raised during the assessment proceedings, the assessee did not file tenable details and the arguments of the assessee are two general in nature.
20. The learned authorised representative submitted before us the copy of the submission made by the assessee before assessing officer on 24/8/2015, 30/08/2015 and 25/04/2014. It was explained that assessee has given the

complete reasons for the variation in expenditure compared to the earlier years. It was further stated that in absence of any defect in the books of accounts the ad hoc disallowance of 80% of the expenditure is not sustainable and should be deleted.

21. The learned departmental representative also vehemently supported the orders of the lower authorities and submitted that assessee has failed to explain the unusual increase in the expenditure compared to the gross receipt of the assessee and therefore in absence of any tenable information and explanation the lower authorities have confirmed the above disallowance.
22. We have carefully considered the rival contention and perused the orders of the lower authorities. The learned assessing officer has merely compared the gross profit and net profit ratios of earlier years with the current year and found that there is a sharp decrease in the profitability of the assessee company, which is one of the reason for the same, is the increase in expenditure. However, the learned assessing officer has not pointed out single instance of the expenditure, which is not incurred for the purposes of the business. As per the letter dated 24/08/2015, the assessee has produced the books of accounts, sales, and purchase bills, vouchers of all the expenditure incurred by the assessee before the lower authorities. It also produced a chart showing the turnover and gross profit and net profit of the assessee. With respect to the each of the expenditure, the assessee has given a reason why there is an increase in the nature of the expenditure and the amount of such expenditure were also mentioned. The rent increase expenditure has been explained by the assessee because of opening of the several branches. He further explained before the assessing officer that there is an increase in the legal and professional fees paid to the lawyers for ongoing litigation with the ex distributors in High Court and in lower courts. It was further stated that there is an increase in the number of the employees by more than 30% and therefore there is an increase in the expenditure. The assessee also substantiated all sale and purchase vouchers with the relevant evidences. For each of the expenditure the assessee has also given in explanation with the tabulation with respect to the earlier years. In view of this, it is apparent that assessee has tried to

justify the increase in the expenditure, which resulted into the lower gross profit and net profit in the hands of the assessee compared to the earlier years. Merely because the expenditure are on the higher side this year compared to the earlier years, when there is no defect pointed out in the details submitted by the assessee and further the explanation given by the assessee was not found to be false, there is no provision in the income tax act which authorizes the lower authorities to disallow the expenditure by applying a fixed percentage without finding that any of the expenditure has been incurred for non-business purposes. The learned CIT – A has also held that the genuineness of the expenditure has to be established. However, he did not find any instances that any of the expenditure incurred by the assessee is not genuine. Merely making an assertion that tremendous increase under almost each had a fixed expenditure leads to establish non-genuineness only. Such a sweeping finding of the learned CIT – A is not sustainable in view of absence of any finding by the lower authorities that assessee has incurred nongenuine expenditure of any instance. Further the explanation given by the assessee has not at all been examined by the learned CIT – A to give such a categorical finding about the genuineness of these expenditure. In view of this we reverse the finding of the lower authorities and direct the learned assessing officer to delete the disallowance of INR 5 5305206/- out of various direct and indirect expenditure incurred by the assessee. In view of this ground number 2 (4) of the appeal is allowed.

23. In view of this, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 18/07/2019.

-Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/07/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi