

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD òSMCö BENCH

**Before: Shri Sudhanshu Srivastava, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 462/Ahd/2015  
Assessment Year 2010-11**

Samir Crop Health Pvt. Ltd. 2, Ground Floor, Shri Krishna Complex, Nr. Old High Court, Opp Loha Bhavan, Navrangpura, Ahmedabad PAN: AALCS5045H (Appellant)	Vs	The ITO, Ward-8(1), Ahmedabad (Respondent)
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**Revenue by: Shri Santosh Karnani, Sr. D.R.  
Assessee by: Smt. Urvashi Shodhan, A.R.**

Date of hearing : 26-06-2019  
Date of pronouncement : 31-07-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-8, Ahmedabad dated 23-12-2014, in proceedings under section 144 r.w.s. 143(3) of the Income Tax Act, 1961; in short öthe Actö.

2. The assessee has raised following grounds of appeal:-

- “1. *Ld. CIT (A) erred in law and on facts in confirming action of AO rejecting books of accounts citing failure of the appellant to produce supporting bills & vouchers ignoring detailed documentary evidence submitted in appellate proceedings on which remand report is also submitted by AO. Ld. CIT (A) ought not to have confirmed rejection of books audited u/s 44 AB of the Act without any adverse remarks by the auditor. It be so held now.*
  2. *Ld. CIT (A) erred in law and on the facts in justifying estimation of income by AO rejecting book result due to non compliance during the assessment proceedings without appreciating compelling circumstances that prevented the appellant from substantiating book result. Ld. CIT (A) ought to have deleted estimated addition appreciating voluminous evidence submitted during appellate & remand proceedings. It be so held now.*
  3. *Ld. CIT (A) erred in law and on facts in confirming action of AO granting depreciation @ 25% instead of 60% on computer software purchased by the appellant relying on order relating to different facts. Ld. CIT (A) ought to have granted depreciation as claimed by the appellant. It be so held now.*
  4. *Alternatively and without prejudice both the lower authorities ought to have allowed computer software expense as revenue expense.*
  5. *Ld. CIT (A) erred in law and on facts in not confirming disallowance of depreciation on air conditioner, vehicle & computer by AO due to absence of supporting bills. Ld. CIT (A) ought to have appreciated that depreciation ought to be allowed when asset purchased through banking channels is put to use for the business of the appellant. Ld. CIT (A) ought to have directed AO to restrict the disallowance only to the extent claimed by the appellant. It be so held now.*
  6. *Levy of interest u/s 234A/B/C & 234D of the Act is not justified.*
  7. *Initiation of penalty proceedings u/s 271(l)(c) of the Act is not justified.”*
3. The fact in brief is that return of income declaring total income of Rs. Nil was filed on 15<sup>th</sup> October, 2010. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 26<sup>th</sup> Sep, 2011. During the course of assessment proceedings, the assessing officer has issued a number of notices u/s. 143(2) of the act as listed at page no. 2 of assessment order, however, the assessee has failed to make any compliance. For non-compliance to the notices issued during the course of assessment proceedings, the assessing officer has also levied penalty u/s. 271(1)(b) of the act but the assessee has not made necessary compliance during the course of assessment proceedings. Under the aforesaid circumstances, the assessing officer has issued show cause notice on 4<sup>th</sup> Jan, 2013 to the assessee to explain why not the book result should be rejected since it had

failed to produce the books and supporting bills/vouchers for verification. However, the assessee has not made any compliance. Thereafter, the assessing officer has again issued a final show cause notice dated 13<sup>th</sup> Feb, 2013 wherein he has made comparison of total expenses incurred by the assessee during the assessment year 2010-11 and in the assessment year 2009-10. The assessing officer has also made comparison of turn over shown during the year under consideration with the total turnover shown in the preceding assessment year. The assessing officer observed that during the assessment year 2010-11 the assessee had claimed total expenditure at Rs. 86,74,550/- as against total expenses of Rs. 48,57,172/- claimed in the assessment year 2009-10 which was increased by Rs. 38,17,378/- compared to the preceding assessment year. There was decrease in the total turnover at Rs. 26,73,92,917/- as against the total turnover of Rs. 34,38,36,364/- in the preceding assessment year. The assessing officer has also observed that the total turnover of the assessee during the year under consideration was about 78% of the total turnover shown in the preceding assessment year, however, the total operating expenses claimed during the year under consideration was Rs. 1,07,06,536/- as against total operating expenses of Rs. 95,95,398/- claimed in the preceding assessment year. In view of the above analysis, the assessing officer was of the view that the overall expenses for the year should not be more than 78% of the total operating expenses of Rs. 95,95,398/- claimed in the preceding year. Consequently, the assessing officer has disallowed the claim of expenses amounting to Rs. 32,23,000/- (Rs. 10706536- Rs. 7484410) and added to the total income of the assessee.

4. During the course of assessment proceedings, the assessing officer has also noticed that assessee has claimed depreciation of Rs. 12,58,064/- on assets. On verification of the detail of assets available on record, the assessing officer noticed that during the year under consideration the assessee has claimed depreciation on the new asset to the amount of Rs. 4,92,430/-. Since the assessee has failed to submit supporting documentary evidences for purchase of the new assets therefore the claim of depreciation to the amount of Rs. 492430/- on new assets was disallowed and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). Before Id. CIT(A) , the assessee has submitted that it could not made compliance before the assessing officer during the course of assessment proceedings because its accountant had left the service. Therefore, the necessary detail could not be filed before the assessing officer. During the course of appellate proceedings before Id. CIT(A), the assessee has submitted paper book comprising of purchasing register, sale register, bank book and copy of bank statement, some ledger expenses and copies of invoices for purchase of fixed assets etc. The Id. CIT(A) has called remand report from the assessing officer. As per the report of the assessing officer, the assessee has not produced the bill of purchase of air conditioner, vehicle and computer, therefore, the Id. CIT(A) has not allowed any depreciation on the aforesaid assets in the absence of existence bills of purchase of these assets. Regarding purchase of motor car, the Id. CIT(A) has directed that if motor car was acquired between 1<sup>st</sup> Jan, 2009 and 1<sup>st</sup> October, 2009 then it will be

entitled for depreciations @ 50%, therefore, the appeal of the assessee was partly allowed.

6. In respect of disallowance of expenses of Rs. 32,23,000/-, the ld. CIT(A) has stated that assessee has not produced the relevant bills/vouchers/documents and books account during the course of assessment proceedings, therefore, the assessing officer has disallowed such expenses in a reasonable manner and there was no reason to disturb the disallowance of expenses made by the assessing officer.

7. During the course of appellate proceedings before us, the ld. counsel has furnished paper book comprising various detail and copies of document furnished before the ld. CIT(A). During the course of appellate proceedings, the ld. counsel has referred para 3.1 from the order of the assessing officer and contended that the assessing officer has made disallowance of expenses on adhoc manner which is unreasonable and unjustified. On the other hand, ld. departmental representative supported the order of lower authorities.

8. We have heard both the sides and perused the material on record. The assessee has not made compliance before the assessing officer during the course of assessment proceedings, consequently, the assessing officer has made addition on estimated basis out of total expenses on comparing with previous year. However, before the ld. CIT(A), the assessee has pleaded that its the accountant has left the service therefore required compliance could not be made before the ld. assessing officer. During the course of appellate proceedings before ld. CIT(A) the assessee has furnished most of

the detail along with the books of account bill voucher as elaborated in the order of Id. CIT(A). However, it is observed that Id. CIT(A) has sustained the adhoc disallowance made by the assessee without any verification and examination of the books of account. On the perusal of the material on record, it is observed that Id. CIT(A) has dismissed the appeal of the assessee just reiterating the finding of the assessing officer. It is observed that the assessing officer was compelled to make disallowance on adhoc basis because of non-compliance in the assessment proceedings. However, after looking to the undisputed fact that assessee has submitted voluminous information and detail at the time of appellate preceding before the Id. CIT(A), the Id. CIT(A) has not decided the issue on merit. In this regard, we observe that section 250(6) of IT Act contemplate that first appellate authority would state the point in dispute and thereafter record reasons in supporting of his finding on those points in dispute. Normally whenever any remand report crept in the proceedings then after removing the irregularity proceedings is to be instituted from that stage but by remitting the issue to the Id. first appellate authority would multiple the limitation because Id. CIT(A) would call for a remand report from the assessing officer and proceedings would commence on two stages. In order to avoid that situation, we deem it appropriate to set aside the order of both the revenue authorities and to remit all the issues to the file of assessing officer. It is needless to say that observation made by us will not injure or impair case of the assessing officer and will not cause any prejudice to the defense/expansions of the assessee. Therefore, the case is restored to the file of the assessing officer for adjudicating all the issues in the instant appeal of the assessee after verification and examination of the detail filed by the

assessee in accordance with law. In the result, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31-07-2019

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 31/07/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क०० तालम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअ अधकरण,  
अहमदाबाद