

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH '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. 367/JP/2018
निर्धारण वर्ष/Assessment Year :2014-15

Shree Shanker Gauri Agro Product Pvt. Ltd., Nainwa Road, Bundi	बनाम Vs.	The ACIT, Sawai Madhopur (Raj.)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAICS9124L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri B. V. Maheshwari (CA)
राजस्व की ओर से/ Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 27/08/2019
उदघोषणा की तारीख/Date of Pronouncement: /09/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 08.01.2018 wherein assessee has taken the following two grounds of appeal.

"1. That the Ld. AO grossly erred on Law and facts in making disallowance on adhoc basis out of certain trading & Manufacturing expenses @ 5% out of this the Id. CIT(A) allowed Rs. 32,06,63.00/- and grossly erred in sustaining disallowance to the extent of Rs. 100,000/- on lum sum basis.

2. That the Ld. AO grossly erred on Law and facts in making disallowance out of various expenses particularly Miscellaneous expenses further the Id. CIT (A) also erred in sustaining the disallowance out of that Rs. 43,325.00/-."

2. Briefly stated, the facts of the case are that the assessee is engaged in the manufacturing and trading of flour & rice mill products. During the course of assessment proceedings, the Assessing Officer, on perusal of manufacturing and trading account observed that most of the expenses are not properly vouched and were met by cash payments. Therefore, these expenses are not subject to verification. In absence of any satisfactory explanation submitted by the assessee, given that most of the expenses are not subject to verification for want of proper vouchers coupled with cash payments, to plug any leakage of Revenue, 5% of the total expenses of Rs. 84,13,267/- amounting to Rs. 4,20,663/- were disallowed and added to the total income of the assessee.

3. On appeal, the Id. CIT(A) held that though it is acceptable that there may be a possibility of certain overlap of non business element in the various expenses categorized in this disallowance due to not having the full support in the form of documentary evidences. It is also true that the disallowance hinges on general observation rather than specific findings. To strike a reasonable balance between both the views, he uphold the disallowance to the extent of Rs. 1,00,000/- and the balance disallowance of Rs. 3,20,663/- was deleted. Against the disallowance of Rs 1,00,000 so sustained by the Id CIT(A), the assessee is now in appeal before us.

4. Further, in respect of various expenses debited in the profit & loss account namely Car Depreciation, Car Insurance, Car Expenses, Telephone Expenditure and Miscellaneous Expenses totalling to Rs. 15,66,877/-, the Assessing Officer held that in absence of any satisfactory explanation submitted by the assessee, most of the expenses are not subject to verification for want of proper vouchers coupled with cash payment. Also, use of car and telephone for purposes other than business cannot be denied. Therefore, to plug any leakage of Revenue 10% of the total expenses were disallowed amounting to

Rs. 15,66,88/-. On appeal, Id. CIT(A) held that he is not convinced with the disallowance made in respect of vehicles and telephone @ 10%. The same were deleted. However, in respect of miscellaneous expenses, he restricted the disallowance to 5% which comes to Rs. 43,325/-. Against the said sustenance of expenses of Rs 43,325, the assessee is in appeal before us.

5. During the course of hearing, the Id. AR submitted that the assessee has filed its return of income disclosing total income of Rs.70,30,540/- and has disclosed gross profit rate of 7% which was accepted by the Assessing Officer and no adverse comment has been made in that regard. However, at the same time, certain adhoc additions have been made by the Assessing Officer which have been partially sustained by the Id. CIT(A). It was submitted that the observations of the Assessing Officer that the expenses are not properly vouched and made most by cash payments is not factually correct. It was submitted that every expense is supported by the vouchers and cash payment where required as per business necessity were made, however within the prescribed limit of Rs. 20,000/- of section 40(A)(3) of the Act and all other payments have been made by the cheque. It was submitted that the AO has disallowed the expenses on lump sum basis and on the surmises & conjunctures, he has not cited even a single example of non business expenses. Further it was further submitted that even Id. CIT(A) has not appreciated the matter in the right perspective and has confirmed the disallowance holding the same as reasonable which cannot be justified.

6. The Id DR is heard who has relied on the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. Firstly, we find that it is a clear case of adhoc disallowance of expenses wherein the Assessing Officer has disallowed 5% of the

manufacturing expenses, building repair, hamali expenses, machinery expenses and transportation expenses. Further, 10% of car running, insurance and depreciations claim as well as telephone and miscellaneous expenses have also been disallowed. There is no specific finding recorded by the Assessing Officer in terms of any of these expenses having not been incurred for the purpose of business or bogus in nature. The disallowance of expenses have thus been made in the routine manner without pointing out any specific defects in the vouchers or the fact that where the payments have been made in cash, such expenses are not incurred for the purposes of business. Mere incurrance of expenditure in cash by itself cannot be a ground for denial of genuine claim of the assessee. There are business necessities which warrant the assessee to incur the expenditure in cash, a fact which has been recognized by the legislature and adequate safeguards have been put in place by way of section 40A(3) of the Act. Though lately there is a policy shift towards digital and cashless transactions which no doubt is a welcome step in the right direction, at the same time, there are certain business exigencies which warrant cash payments. Therefore, merely because cash payment has been made is not an indicator that the transaction is non-genuine or bogus or the cash payment has not been made for purposes of business. Where in particular facts and circumstances of the case, the Assessing officer is of the view that there are suspicious cash payments, in such a situation, he should carry out further examination and investigation in the matter and should come out with specific and conclusive findings. However, in the instant case, we donot see any specific finding recorded by the Assessing officer. Further, on perusal of the ledger accounts produced by the Id. AR, it is observed that though there are cash payments, at the same time, there are also payments made by cheque and entries towards expenses which have been claimed as subsequently paid by cheque. Therefore, observation of the AO that payments have been made in cash doesn't apply as far as these transactions are concerned. We therefore

find that in absence of any specific findings by the Assessing Officer, there is no basis for disallowance of expenses on an adhoc basis which cannot be sustained in the eyes of law. Hence, the disallowance so confirmed by the Id. CIT(A) is hereby directed to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 02/09/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/09/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shree Shanker Gauri Agro Product Pvt. Ltd.,
Bundi
2. प्रत्यर्थी / The Respondent- ACIT Circle, Sawai Madhopur
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. 367/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

