

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1240/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Pipada Motors,
Plot No. 11 & 12, Sahyadri Chowk,
Nagapur, Ahmednagar – 414001

..... अपीलार्थी /
Appellant

PAN : AAOEP3781B

बनाम v/s

The Asst. Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Chandra Bhanu Mandal

सुनवाई की तारीख / Date of Hearing : 04.10.2019	घोषणा की तारीख / Date of Pronouncement: 07.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is against the order of Commissioner of Income Tax (Appeals) – 2, Pune for the assessment year 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm stated to be authorized dealer of M/s. Tata Motors Ltd. and also having showroom and workshop for Tata Motors Light commercial vehicles. Assessee filed its return of

income for A.Y. 2014-15 on 10-11-2014 declaring total income at Rs.23,95,815/-. The case was selected for scrutiny and thereafter assessment was framed u/s. 143(3) of the Act vide order dated 23-12-2016 and the total income was determined at Rs.35,16,500/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dated 26-04-2018 (in appeal No. PN/CIT(A)-2/ACIT Cir./AN/1076/2017-18) granted partial relief to the assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal and has raised following grounds :

- “1. *On the facts and in the circumstances of the case and in law the lower authorities have erred in disallowing a sum of Rs.9,000/- being VAT Audit fees paid during the year for audit of FY 2012-13 by treating it as prior period expenses by disregarding appellant's contention in this regard.*
2. *On the facts and in the circumstances of the case and in law the Lower Authorities have erred in making a disallowance of Rs.1,58,219/- on ad-hoc basis 10% of Rs.15,82,184/- out of office expenses of Rs.8,20,699/- by presuming that some of the expenses are incurred in cash and possibility of inflation cannot be ruled out.*
3. *On the facts and in the circumstances of the case and in law the Lower Authorities have erred in making an ad-hoc disallowance of Rs.2,46,031/- being cash refund made to customers by disregarding appellant's contention.*
4. *On the facts and in the circumstances of the case and in law the Lower Authorities have erred in making a disallowance of Rs. 6,81,780/- out of RTO Charges on ad-hoc basis by applying a ratio of 20% on total RTO Expenses Rs.34,08,901/-.”*

3. The first ground is with respect to disallowance of Rs.9,000/- by considering it as prior period expenses.

4. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had debited Rs.9,000/- to the Profit and Loss on account on VAT audit fee, pertaining to F.Y. 2012-13. The Assessing Officer was of the view that since the audit was for F.Y. 2012-13 it was expenditure of prior period and not allowable in the year under consideration. He therefore disallowed Rs.9,000/-.

Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A), who upheld the order of Assessing Officer. Aggrieved the order of CIT(A), the assessee now in appeal.

5. Before me, the ld. AR reiterated the submissions made before Assessing Officer and CIT(A) and further submitted that though the claim is for VAT audit fee for F.Y. 2012-13 but the audit was completed after the year end and the bill from auditor was also received by the assessee in the year under consideration and therefore, the same be allowed. The ld. DR supported the order of lower authorities.

6. I have heard the rival submissions and perused the material on record. The issue in present ground is with respect to denial of claim of deduction of Rs.9,000/- by holding the expenses to be of prior period. Before me, it is assessee's contention that the bill from the auditor for audit of VAT was received after the completion of year and in the year under consideration and the audit was also completed after the financial year ending 31-03-2013. The aforesaid facts have not been controverted by the Revenue. Considering the totality of the aforesaid facts, I am of the view that the claim of assessee needs to be upheld, more so as the bill was received in the year under consideration and the audit was also completed after 31-03-2013. I therefore direct the deletion of disallowance. **Thus, the ground raised by the assessee is allowed.**

7. The ground No. 2 with respect to disallowance of Rs.1,58,219/- on ad-hoc basis.

8. The Assessing Officer noticed that the assessee had debited Rs.7,31,495/- on account of office expenses and Rs.8,20,699/- on account of workshop expenses thus, aggregating to Rs.15,82,194/-. The assessee was asked to prove the genuineness of expenses and produce the necessary documentary evidence to support it. On perusing the documents furnished by the assessee the Assessing Officer noted that most of the expenses have been incurred in cash and were not fully supported with independent evidences. He therefore disallowed 10% of the aggregating expense and worked out disallowance at Rs.1,58,219/-. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer by noting that the assessee had itself agreed for disallowance to the extent of 10%. Aggrieved by the order of CIT(A), the assessee is now in appeal.

9. Before me, the ld. AR reiterated the submissions made before Assessing Officer and CIT(A) and submitted that the disallowance has been made on ad-hoc basis without any evidence of the expenses not being genuine. He therefore, submitted that the addition be deleted. The ld. DR on the other hand pointed out the findings of CIT(A) and Assessing Officer wherein it was noted that the assessee had agreed for such disallowance and therefore, the same was disallowed. He submitted that the assessee can now not be allowed to take about turn and agitate the issue. He thus supported the order of CIT(A) and Assessing Officer.

10. I have heard the rival submissions and perused the material on record. The issue in present ground is with respect to disallowance of Rs.1,58,219/- on ad-hoc basis. I find that the CIT(A) has noted

that the assessee had agreed for disallowance to the extent of 10%. Before me no material has been placed by the assessee to demonstrate that the findings of CIT(A) about the assessee having agreed for disallowance was incorrect. Under such situation I find no reason to interfere with the order of CIT(A) and thus, **ground raised by the assessee is dismissed.**

11. The ground Nos. 3 and 4 are considered together.

12. During the course of assessment proceedings the Assessing Officer noticed that the assessee was charging higher amount from the customer on sales and later on after expiry of significant time, claimed to allow discount to the customer which was refunded in cash. The total of such refund worked out to Rs.24,60,313/-. He also noticed that the assessee was in the practice of paying RTO payment in cash on behalf of the customer and during year the assessee had made payment of Rs.34,08,901/-. The assessee was asked to explain as to why the same be not disallowed and also explain the refund of discount paid to the customers. With respect to discount it was submitted by the assessee that the assessee first issues quotation of the vehicle to the customer for his loan purpose. On the basis of quotation, the bank or financial institution sanctions loan to the customer and the payment is received by the assessee from bank or financial institution. After payment is received, the delivery of vehicle is made and the final bill is prepared. While preparing the final bill the prevailing discount as per schemes of supplier is passed on to the assessee which leads to credit balance in the account of customers which is refunded to the customer on completion of paper work. It was further submitted that the assessee

was following the same practice of accounting. The submission of assessee was found not acceptable to the Assessing Officer. The Assessing Officer disallowed 10% of the total discount given to the customers and worked out the disallowance at Rs.2,46,031/-. With respect to the payment to RTO charges, the Assessing Officer held that the assessee has failed to prove the claim of RTO expenses. He accordingly, disallowed 20% of the RTO expenses and worked out the disallowance of Rs.6,81,780/- as being non-genuine and non-business expenses. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer. Aggrieved by the order of CIT(A), the assessee is now in appeal.

13. Before me, the ld. AR reiterated the submissions made by Assessing Officer and CIT(A) and further submitted that the assessee is following the same method of accounting for discounts and RTO payments and no disallowance has been made in subsequent year. He further submitted that as far as RTO expenses are concerned the payments are made on behalf of the customers and assessee is not claiming it as expenses in its books of account and in such a situation no disallowance can be made in assessee's hands. The ld. DR on the other hand supported the order of Assessing Officer and CIT(A).

14. I have heard the rival submissions and perused the material on record. The issue in present ground is with respect to disallowance of Rs.1,58,219/- of discount paid on ad-hoc basis and disallowance of Rs.6,81,780/- on account of RTO expenses. It is assessee's contention that the assessee is following same method of accounting

for discount and RTO expense and no disallowance has been made by Revenue in earlier or subsequent years. With respect to RTO expenses, it is assessee's submissions that it is incurred on behalf of the customers and the expenses are not booked in the books of account of assessee. The aforesaid contentions of the assessee have not been controverted by the Revenue. I further find that the disallowance has been made on ad-hoc basis without bringing on record any material to demonstrate that the expenses are not genuine or fictitious. Considering the totality of facts I find force in the submissions of Id. AR and I therefore, direct the deletion of addition made by the Assessing Officer on account of discount and RTO expenses. **Thus, the grounds raised by the assessee are allowed.**

15. In the result, the appeal of assessee is partly allowed.

Order pronounced on the 07th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 07th October, 2019.

RK

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT (A)-2, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.