

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 786/JP/2018
निर्धारण वर्ष / Assessment Year: 2012-13

Shri Mukesh Kumar Sharma, D-10, Chomu House, Near Shiv Heera Path, Jaipur.	बनाम Vs.	I.T.O., Ward-2(3), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGXPS 0033 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rajiv Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 21/10/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 16/04/2018 of Id. CIT(A)-I, Jaipur for the A.Y. 2012-13. The assessee has raised following grounds of appeal:

"1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. AO by making following disallowances:

Particulars	Amount (Rs.)	Disallowed (Rs.)
Power & Fuel Expenses	16,16,254/-	3,32,250/-
Repair & Machinery	1,15,188/-	23,037/-
Wages	8,64,000/-	1,80,000/-
Conveyance Expenses	95,600/-	19,000/-

<i>Telephone Expenses</i>	<i>18,677/-</i>	<i>4,000/-</i>
<i>Other expenses</i>	<i>5,077/-</i>	<i>1,000/-</i>
<i>Total</i>	<i>27,14,796/-</i>	<i>5,59,287/-</i>

The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the above disallowances of Rs. 5,59,287.

2. *The assessee craves its rights to add, amend or alter any of the grounds on or before the hearing."*

2. The assessee is an individual and proprietor of Gravita Sales Agencies, engaged in the distribution business of milk and other products of Saras Dairy. The assessee filed his return of income on 30/09/2012 declaring total income of Rs. 5,48,820/-. The A.O. while completing the scrutiny assessment U/s 143(3) of the Income Tax Act, 1961 (in short, the Act) has made various disallowances of expenses on account of power and fuel expenses, repair and machinery, wages, conveyance, telephone and other expenses total amounting to Rs. 5,59,287/-. Aggrieved by the order of the A.O., the assessee filed appeal before the Id. CIT(A) and contended that the assessee owned six trucks for distribution of the products of Saras Dairy and used to reimburse petrol and diesel expenses at fixed rate as per the arrangement with the drivers, therefore, the assessee was not having any bills and vouchers regarding fuel expenses. As regards the maintenance and repair expenses, the assessee claimed repair expenses of six truck is

reasonable. The other expenses on account of conveyance and telephone are also claimed to have been incurred to carry out the routine day to day work and therefore, are allowable business expenses. The Id. CIT(A) did not accept this contention of the assessee for want of any supporting evidence.

3. Before the Tribunal, the Id AR of the assessee has submitted that as per the modus operandi of the assessee's business, the drivers not only drive the vehicles but also delivered goods at the delivery stations assigned to them. The assessed fixed a particular consumption rate of diesel in running the vehicles by respective drivers which serves as an internal check and reduced an administrative work on his part. The fixed amount of the assessee are audited U/s 44AB of the Act without any qualification made by the auditor. Once the instances of six delivery trucks is not in dispute then fuel and running charges of these trucks is an allowable expenditure. The assessee has entered into a contractual understanding with its drivers to reimburse for fuel expenses at fixed rate and therefore, they were not asked to submit bills and vouchers. As regards the labour wages, the Id AR has submitted that each vehicle requires a separate driver who is not only drive the vehicle but also deliver the goods at the delivery station assigned to them. The assessee has employed six drivers for six delivery vehicles @ Rs. 12,000 per

month which is most reasonable with respect to commercial vehicles. The other expenses i.e. conveyance, telephone and other were incurred to carry out the routine day to day work. The expenses were being booked on reimbursement basis to the station and therefore, proper supporting vouchers were not available.

4. On the other hand, the Id DR has submitted that the assessee has failed to furnish any documentary evidence in support of the claim of various expenses, therefore, the A.O. was very reasonable in making the disallowances on account of these expenses claimed by the assessee. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant material on record. The expenditures claimed by the assessee and part of which were disallowed by the A.O. are given in the grounds of appeal itself but for the sake of completeness, the same is reproduced as under:

Particulars	Amount (Rs.)	Disallowed (Rs.)
Power & Fuel Expenses	16,16,254/-	3,32,250/-
Repair & Machinery	1,15,188/-	23,037/-
Wages	8,64,000/-	1,80,000/-
Conveyance Expenses	95,600/-	19,000/-
Telephone Expenses	18,677/-	4,000/-
Other expenses	5,077/-	1,000/-
Total	27,14,796/-	5,59,287/-

From the details of the expenditures claimed and disallowances made by the A.O., it is clear that the A.O. has made 20% disallowances of these expenses for want of supporting evidences produced by the assessee. The A.O. has specifically pointed out that the assessee though claimed these expenses and booked in the P&L account, however, no vouchers or bills have been produced by the assessee in support of these expenses. This fact is not in dispute as the assessee has accepted that he has not produced any bill or voucher in respect of all these expenses, 20% of which were disallowed by the A.O. The A.O., thus accepted the fact that the expenditures claimed by the assessee are not bogus claim. However, since the assessee has not able to prove that these expenses are wholly and exclusively incurred for the business of the assessee, the part of the expenses were disallowed for want of supporting bills and vouchers. The Id. CIT(A) while confirming the disallowances made by the A.O. has decided this issue in para 3.1.2 as under:

“3.1.2 Determination:

- (i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. The appellant was engaged in the distribution business of milk and other products of Saras Dairy. The AO has disallowed a sum of Rs. 5,59,287/- out of Rs. 27,14,796/- claimed by the appellant on account of various*

expenses by observing that the appellant has not maintained vouchers relating to these expenses i.e. Power & Fuel, Repair & Machinery, Wages, Conveyance, Telephone and Other expenses.

- (ii) *During the appellate proceedings, it was submitted by the appellant that it owned six trucks for the distribution of products of Saras Dairy and it has entered into a contractual understanding with the drivers of these trucks for reimbursement of petrol and diesel expenses at a fixed rate and they were not asked to submit the bills. It was further stated that the wages were also paid to these drivers of six trucks. Regarding the remaining expenses, it was stated that the repair and machinery expenses of six trucks was reasonable and the conveyance, telephone and other expenses were incurred to carry out routine day to day work and these expenses were booked on reimbursement basis and therefore, proper supporting vouchers were not available.*
- (iii) *It is an admitted fact that the vouchers for the various expenses were not maintained by the appellant and in the absence of vouchers, it cannot be ascertained whether these expenses were incurred for the purposes of the business of the appellant. The appellant did not file any evidence about the contractual understanding with the drivers as claimed during the appellate proceedings for the first time. Further, the appellant could not controvert the findings of the AO as recorded in the assessment order. Therefore, in view of the above discussion, I do not find any reason to interfere with the findings of the AO as recorded in the assessment order and*

consequently, the disallowance of Rs. 5,59,287/- is hereby sustained."

Principally, I do concur with the view of the A.O. as well as the Id. CIT(A) that when the assessee has not produced any documentary evidence in support of the expenses as well as in support of the explanation that he was having any arrangement with the drivers to pay them a fixed amount on account of fuel expenses. However, since all these expenses are otherwise essential for carrying out the business activity by the assessee, therefore, the claim of the assessee cannot be considered as absolutely bogus or falls. Accordingly, having regard to the facts and circumstances, the disallowances made by the A.O. at 20% appears to be on higher side and excessive, therefore, the same is restricted to 10%.

6. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on 21st October, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 21st October, 2019
*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Mukesh Kumar Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-2(3), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 786/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar