

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD ÷ BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1614 /Ahd/2017 & CO No. 50/Ahd/2018  
Assessment Year 2012-13**

The DCIT, Circle-4(1)(1), Ahmedabad (Appellant/Respondent)	Vs	Urmin Products Pvt. Ltd. 48, Changodar Industrial Estate, Nr. Besan Factory Sarkhej-Bavla Road, Changodar Ta. Sanand- 382213 PAN: AAACU4489Q (Respondent/Cross Objector)
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**Revenue by: Shri Vidhut Trivedi, Sr. D.R.  
Assessee by: Shri Asem L. Thakkar, A.R.**

Date of hearing : 21-10-2019  
Date of pronouncement : 19-11-2019

**आदेश/ORDER**

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

This revenue appeal and cross objection filed by assessee for A.Y. 2012-13, arise from order of the CIT(A)-8, Ahmedabad dated 25-04-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

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

"1) *Whether the id. CIT(Appeal) is right in law and on facts in deleting the addition of Rs. 4,47,060/- made on account of loss of raw tobacco. "*

2) *"Whether the Ld. CIT(Appeal) is right in law and on facts in deleting the addition of Rs. 12,74,187/- made on account of undervaluation of closing stock. "*

3) *"Whether the Id. CIT(Appeal) is right in law on facts in restricting the addition on account of manufacturing loss from Rs.2,36,64,474/- to Rs.4,47,060/- ."*

4) *"Whether the Ld. CIT(Appeal) is right in law and on facts in deleting the disallowance of Rs. 91,372/- made on account of damaged goods."*

Cross Objection No. 50/Ahd/2018 filed by assessee

3. The assessee has raised following grounds in the cross objection:-

1. *The learned Commissioner of Income Tax (Appeals) has erred in confirming addition of Rs.4,47,060/- on account of manufacturing loss.*

2. *The learned Commissioner of Income Tax (Appeals) has erred in confirming disallowance of Rs.4,85,323/- made by the Assessing Officer in respect of foreign travel expenses.*

3. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance Rs.64,886/- made by the Assessing Officer for the alleged excess depreciation claimed by the respondent on Electrical installations.*

4. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance Rs.2,57,570/- made by the Assessing Officer for the alleged delay in payments of Employees' Contribution to PF of Rs.174954/- and to ESIC of Rs.82,616/- u/s.2(24)(x) r.w.s.36(l)(va) of the I.T.Act,1961.*

5. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of expenses of Rs.22,600/- made by the Assessing Officer u/s.35D of the I. T. Act, 1961."*

4. The fact in brief is that the assessee has filed return of income on 29<sup>th</sup> Sep, 2012 declaring total income at Rs. 44,60,25,580/-. The case was subject to scrutiny assessment. The assessment u/s. 143(3) of the act was finalized on 23<sup>rd</sup> March, 2015 and total income of the assessee was assessed at Rs. 47,23,33,050/- after making various additions and disallowances. The particular disallowances/additions contested in the appeal of the Revenue are adjudicated as under:-

Ground No. 1 (Deleting the addition of Rs. 4,47,060/- on account of loss of raw tobacco)

5. During the course of assessment, the assessing officer noticed that assessee has claimed loss of 7745.2 kg. raw tobacco, the value of which comes to Rs. 4,47,060/-. On query, the assessee explained that tobacco flakes contained various impurities which were required to be removed before processing the same, therefore, the same resulted in weight loss. The assessing officer has not accepted the explanation of the assessee stating that modern machine has improved techniques of SI in packs used by the assessee and disallowed the claim of loss of Rs. 4,47,067/-

Ground No. 2 (Deleting the addition of Rs. 12,74,187/- on account of undervaluation of closing stock)

6. The assessing officer has noticed that assessee valued the closing stock at lesser rate than the average purchase rate, therefore, the show cause notice was issued to the assessee to explain why not closing stock should be valued at average purchase rate. The assessee explained that the raw material was valued at cost and finished goods were valued at a cost or net realizable value whichever was less and WIP was valued at estimated cost. It is also explained that assessee has followed these methods consistently and same has been accepted by the department in the scrutiny assessment made u/s. 143(3) of the act. The assessing officer has not agreed with the submission of the assessee and adopted the average purchase value for valuation of closing stock and made addition of Rs. 12,74,187/-.

Ground No. 3 (Addition on account of manufacturing loss of Rs. 2,36,64,474/- to 4,47,060/-) and ground no. 1 of cross objection filed by the assessee

7. At the time of assessment, the assessing officer has noticed that assessee has processed raw material of 44,03,881.014 kg and produced 43,45,196 kg of finished goods and shown manufacturing loss of 64,595.264 kg in manufacturing. The assessee explained that loss was on account of natural dryage, flying away of dust and small particles of tobacco during sieving and on account of volatile nature of chemicals and perfumes used in the process, sweeping and filling in various size of pack etc. The assessing officer has not accepted the explanation of the assessee and treated the manufacturing loss of Rs. 2,36,64,474/- as unexplained and added to the total income of the assessee.

Ground No.4 (Deleting the disallowance of 91,372 on account of damage goods)

8. During assessment , the assessing officer noticed that assessee has debited Rs. 91,372/- in the Profit and Loss account on account of damaged goods claim and disallowed the same stating that assessee has not produced any detail or any other documentary evidences to show that the loss was actually incurred by the assessee.

9. Aggrieved assessee has filed appeal before the ld. CIT(A).

10. Regarding addition of loss of Rs. 4,47,060/- on account of raw tobacco, the ld. CIT(A) has deleted the said addition stating that loss is

consistent in nature and assessee company is subject to audit by excise authorities and day to day production consumption records are being maintained which are scrutinized by the excise authority. The assessee manufactures tobacco from raw tobacco in the form of small flags and remove impurities before processing i.e. dust, threads and other parts of plants i.e. seeds, stems, seeds, small stone/earthen material etc. which are to be separated and discarded. The assessee has maintained day to day production consumption record which was subject to scrutiny by the excise authority and the total wastage occurred on account of raw tobacco is 0.210% of the total consumption. The ratio of loss on account of raw tobacco was very consistent as the same was 0.2048 % in assessment year 2011-12 and 0.2112 % in F.Y. 2014-15. Considering these facts and circumstances, we do not find any infirmity in the decision of Id. CIT(A), therefore, the appeal of the revenue is dismissed on this issue.

10.1 In respect of addition of Rs. 12,74,187/- for undervaluation of closing stock of Varakh and Masala, it is noticed that assessee has consistently applied FIFO method for valuation of stock in respect of Varakh and Masala and furnished purchase bills on sample basis of various items but the assessing officer has not pointed out how the method of valuation adopted for valuation of stock was wrong. It is clearly elaborated in the finding of the Id. CIT(A) that during the course of assessment proceedings, the assessing officer has not demonstrated how the method of valuation adopted for valuation of stock by the assessee was wrong. Therefore, we do not find any error in the finding of Id. CIT(A). Accordingly, this ground of appeal of the revenue is dismissed

10.2 The addition of Rs.2,36,64,474/- for the manufacturing loss was made by the assessing officer on the observation that in the process of manufacturing of tobacco, there cannot be any process loss as the assessee has used the processed material. In this regard, we have noticed that during the course of assessment, the assessee has elaborately explained the entire process where the wastage is occurred. The relevant part of the same is reproduced as under:-

*“i. Raw Tobacco is purchased from traders and agriculturist. This raw Tobacco comes in packing of 40 / 30 kg. This Tobacco is taken out manually from the bags at which stage there is certain spillage etc. From the raw Tobacco dust, stems, and other impurities etc are removed by sieving machine. Therefore wastage occurs at this stage.*

*ii Thereafter various items such as Masala. Glycerin, Menthol, Kesar, Perfume etc are added to the raw Tobacco. The mixing with tobacco takes place with the help of mixers so that the same is duly blended with the raw tobacco.*

*iii After the mixing process is undertaken the same is again passed through sieving machine so as to remove impurities and the same is collected in drums. Due to the passage of material from sieving machine and handling of material by manual process, there occurs certain wastage.*

*iv. After that, varakh is added to this product mix depending on the type of brand manufactured.*

*v. After the final product is ready the same is packed in tins which also results in spillage and other wastage during process. Therefore, due to multiple stages of cleaning the "product, manual handling of the product at different stages and also packing the same into tins of the sizes varying from 9 gins onwards there occurs wastage in the manufacturing process.*

*vi Further we have to comply by legal metrology act for which we have to ensure that the product in each of our various sizes of packing should have the weight of finished products as prescribed on the respective packing. Thereby in the packing process there is some quantity of give away loss”*

It is observed that assessing officer has not pointed out any specific defect in the manufacturing process and on general basis rejected the manufacturing loss claimed by the assessee. The entire production record was maintained as prescribed by the excise authority which was subject to scrutiny and

examination by the excise authorities. During the year under consideration there was increase in the gross profit and net profit of the assessee compared to the other years. Considering the above facts and circumstances, we do not find any infirmity in the decision of Id. CIT(A) in restricting the addition of manufacturing loss to Rs. 4,47,060/-, therefore, this ground of the revenue is also dismissed. The ground of cross objection filed by the assessee is also dismissed as we justify the finding of the Id. CIT(A) that claim of loss of raw tobacco should be the part of the total loss of manufacturing process.

10.3 The last ground of appeal of the revenue against deleting disallowance of Rs. 91,372 on account of damage goods, it is noticed that the claim is just 0.004% of the total turnover which is miniscule looking to the size of the turnover. In this regard, it is noticed that this claim of damaged goods is made by the agents/dealers because of pilferage during transport etc. The assessee has also furnished the credit notes issued to the parties after verification and no cash payment was made against the claim of damaged goods as the dealers required to make less payment in the subsequent disbursement after reducing the claim of damaged goods. Considering the facts and circumstances, we do not find any error in the decision of Id. CIT(A), therefore, this ground of the revenue is also dismissed.

Ground No. 2 of cross objection against confirming addition of Rs. 4,85,323/- of foreign travel expenses

11. The assessee has failed to substantiate with relevant supporting evidences that foreign travel expenses were connected to the business purpose of the assessee. Even the assessee has failed to controvert the

findings of the A.O. that foreign trips were made to Singapore, Hongkong under the arranged tour package and the assessee could not demonstrate with supporting evidences that tour was connected with business purpose of the assessee. Therefore, this ground of cross objection filed by the assessee is dismissed.

Ground No. 3 of cross objection against disallowance of Rs. 64,886/- as excess depreciation on electrical installation

12. It is noticed that the assessee has failed to substantiate with relevant supporting evidences that the electrical fitting was part of plant and machinery, therefore, we do not find any error in the decision of ld. CIT(A). Accordingly, this ground of cross objection of the assessee stands dismissed.

Ground No. 4 of cross Objection against confirming disallowance of employees contribution to PF or ESIC

13. The issue is covered against the assessee by the decision of Honøble Jurisdictional High Court in the case of Gujarat State Road Transport Corporation Ltd. 41 taxman.com 100 (Gujarat), therefore, this ground of cross objection is rejected.

Ground No. 5 of cross objection against confirming disallowance of expenses of Rs. 22,600/- u/s. 35D of the I.T. Act

14. After considering the fact that such expenditure has been incurred for increasing the authorized share capital, this ground of cross objection of the assessee is dismissed after following the decision of the Honøble Supreme

Court in the case of Punjab State Industrial Development Corporation Ltd.  
vs. CIT (1997) 225 ITR 792(SC).

15. In the result, the appeal of the revenue and cross objection filed  
assessee both are dismissed.

Order pronounced in the open court on 19-11-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 19/11/2019**

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

**आदेश क०० तलम 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