

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.222/Ind/2018
Assessment Year: 2013-14**

Permali Wallace Ltd. Hoshangabad Road, Bhopal (Appellant)	<u>बनाम/</u> Vs.	ACIT-3(1) Bhopal (Revenue)
PAN: AABCP7557R		
Appellant by	Miss Nisha Lahoti, CA	
Revenue by	Shri K.G. Goyal, Sr. DR	
Date of Hearing:	25.11.2019	
Date of Pronouncement:	29.11.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2013-14 is directed against the order of Commissioner of Income Tax(Appeals)-2, Bhopal, (in short 'CIT'), dated 02.07.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 22.02.2016 by ACIT-3(1), Bhopal.

2. The assessee has raised following grounds of appeal:

“That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is not justified in sustaining the adhoc disallowances @ 10% of the following genuine business expenditure incurred by the assessee in the relevant year:-

<i>S.NO.</i>	<i>Particulars of Expenditure claimed</i>	<i>Amount of disallowance @ 10% sustained</i>
<i>1</i>	<i>Coal & diesel & Oil Consumption Expenses</i>	<i>943914</i>
<i>2</i>	<i>Packing Materials</i>	<i>8916000</i>
<i>3</i>	<i>Repairs & Maintenance</i>	<i>1637000</i>
<i>4</i>	<i>Travelling & conveyance</i>	<i>1422500</i>
<i>5</i>	<i>Other Expenses</i>	<i>718100</i>

2. That on the facts and in the circumstances of the case and in law, the expenditure claimed by the assessee in its profit & loss account as mentioned in GroundNo.(1) above are genuine expenditure actually incurred by the assessee wholly and exclusively for the business purposes and, therefore, the adhoc disallowances are neither justified nor lawful and hence the same be kindly deleted. ”

3. Brief facts as culled out from the records are that the assessee is a Private Limited Company engaged in a manufacturing industry, selling various kinds of wood and glass products like deniffied Wood, Laminated Wood, impregnated Wood and glass fibre laminates, etc. The return of income was filed on 28.09.2013 declaring loss of Rs.2,96,36,240/-. Case was selected for scrutiny assessment followed by serving of notices u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings Ld. AO examined certain expenses on test check basis and after conducting such verification observed that some of the vouchers are missing, some of the vouchers are not properly maintained and some are self-made.

After giving general finding, 20% disallowance of expenses at Rs.1,12,26,228/- was made in the following manner:

S.NO.	Head of Expenditure	Total amount debited in P & L account (Rs.)	Amount of disallowed @ 20% of expenses (Rs.)
1	Coal & diesel & Oil Consumption Expenses	9439140	18,87,828
2	Packing Materials	89,16,000	17,83,200
3	Repairs & Maintenance	1,63,70,000	32,74,000
4	Travelling & conveyance	1,42,25,000	28,45,000
5	Other Expenses	71,81,000	14,36,200
	Total	5,61,31,140	1,12,26,228

4. After making the expenses disallowance of Rs.1,12,26,228/- loss assessed at Rs.1,84,10,012/-.

5. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and partly succeeded who confined the alleged disallowance to 10%.

6. Now the assessee is in appeal before the Tribunal against disallowance sustained by the Ld. CIT(A).

7. Ld. counsel for the assessee submitted that books of accounts and financial statement are duly audited. All books of accounts and vouchers were placed for verification. Inspector was designated by the Assessing Officer to make verification. No specific instance has been mentioned in the assessment order showing the defect in the

bills and vouchers maintained by the assessee. Ld. AO erred in making ad hoc disallowance without pointing out any specific error in the books of accounts. She further contended that in view of the following judicial pronouncement the impugned adhoc disallowance needs to be deleted:

1. DCIT vs. CPR Distributors Private Limited in ITANo.552/Ind/2017 (I.T.A.T.,Indore)
2. M/s Commins Technologies India Private Limited vs. ACIT in ITANo.231/Ind/2016 (I.T.A.T.,Indore)

8. She further contended that the alleged expenses are purely for business purpose and there is no personal element. Since they have been incurred wholly and exclusively for the purpose of business, no adhoc disallowance should have been made. She placed reliance on following judgments:

1. Sassoon J. David & CO. (P.) Ltd. vs. CIT (1979) 118 ITR 261(SC)
2. S.A. Builders Ltd. vs. Commissioner of Income Tax (2007) 288 ITR 1(SC).
3. Addl. CIT vs. Rajashtan Spg. & Wvg. Mills Ltd. (2005) 274 ITR 465(Raj)
4. CIT vs. Birla Cotton Spg. & Wvg. Mills Ltd./Birla Bros. (P.) Ltd. (1971) 82 ITR 166(SC)

9. Per Contra Ld. Departmental Representative (DR) vehemently argued supporting the orders of the lower authorities.

10. We have heard rival contentions and perused the record placed before us and carefully gone through the judgment referred and relied by the Ld. counsel for the assessee. The short issue before us relates to adhoc disallowance made by the ld. AO in the following manner:

S.NO.	Head of Expenditure	Total amount debited in P & L account (Rs.)	Amount of disallowed @ 20% of expenses (Rs.)
1	Coal & diesel & Oil Consumption Expenses	9439140	18,87,828
2	Packing Materials	89,16,000	17,83,200
3	Repairs & Maintenance	1,63,70,000	32,74,000
4	Travelling & conveyance	1,42,25,000	28,45,000
5	Other Expenses	71,81,000	14,36,200
	Total	5,61,31,140	1,12,26,228

11. Ld. CIT(A) sustained the disallowance to 10% as against the 20% made by the Ld. AO against which assessee is in appeal before us.

12. We observe that in the impugned assessment order Ld. AO has not given any specific finding pointing out any error/mistake in the bills and vouchers produced by the assessee. Ld. AO has also not raised a doubt on the genuineness of the expenses. Similarly the reason given by lower authorities that expenses have been incurred in cash, vouchers are self-made etc. cannot be a solid basis to make adhoc disallowance completely ignoring the fact that books of

accounts are audited and financial statements have been certified by the Auditor after duly examining the books of accounts bills and vouchers. It is also discernable from records that an Inspector was assigned the job for the verification of the vouchers in the course of assessment proceedings and the exercise was carried out by the Inspector several times. The assessee has also filed various replies on 28.09.2015, 23.11.2015, 22.12.2015, 22.12.2015, 23.01.2016, 04.02.2016, 05.02.2016 & 09.02.2016. These facts are undisputed that the assessee made sufficient cooperation to file necessary details and produced books of accounts and bills and vouchers for verification. Not a single instance has been pointed out by the Ld. AO about any irregularities in the books of accounts maintained by the assessee. Only general remarks have been made for making 20% adhoc disallowance of certain type of expenses.

13. We, observe that similar set of facts and issue came up before the Coordinate Bench Indore, in the case of M/s Cummins Technologies India Private Limited vs. ACIT in ITANo.231/Ind/2016 dated 15.03.2017 and issued was decided in favour of assessee thereby deleting the adhoc disallowance observing as follows:

“13. Relying the above the Ld. DR supported the action of the Assessing Officer and submitted that the assessee only offered FBT of 20%, therefore, the assessing officer was quite justified in making disallowance of 20% of balance expenditure. The Ld. DR further submitted that during the first appellate proceedings after considering submission of the assessee the Ld. CIT(A)

granted part relief to the assessee and upheld the 10% of addition, therefore, there could be no grievance of the assessee in this regard. On careful consideration of our submissions, we observe that undisputedly the assessee has paid FBT of Rs.89,5498/- on account of total expenses incurred by the assessee on sales promotion expenses. The assessing officer made 20% disallowance which was reduced to 10% by the Ld. CIT(A) but no defect or any other discrepancy has been pointed out by the authorities below in the claim of the assessee no adverse material, allegation or evidence has brought on record to make addition or to sustain part addition. We also observe that the assessee submitted all the relevant bills and vouchers before the authorities below which were examined by them on test check basis and without any pointing out any defect or discrepancy therein the assessing officer proceeded to make ad hoc disallowance which was reduced by the Ld. CIT(A) to 10% that too without any basis.

14. In view of the above, we are of the considered opinion that ad hoc addition as made by the assessing officer which has been partly upheld by the Ld. CIT(A) without any reasonable cause and justified basis, therefore, the same cannot be held as sustainable and hence we dismissed the same. Accordingly ground no.2 of assessee is allowed.”

14. We, therefore, in the given facts and circumstances of the case and respectfully following decision referred hereinabove and

observing that revenue authorities failed to bring on record any specific instance or irregularities in the bills and vouchers maintained by the assessee before making adhoc disallowance, we are thus inclined to hold in favour of the assessee and delete the impugned disallowance of expenses sustained by the Ld. CIT(A) @ 10%. Thus, ground no.1 & 2 of the assessee's appeal stands allowed.

15. In the result, the appeal of the assessee stands allowed.

Order was pronounced in the open court on 29.11.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 29/11/2019

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar