

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**  
**आ.अ.सं./I.T.A No.2913/AHD/2014**  
**निर्धारणवर्ष/Assessment Year: 2005-06**

Sidmak Laboratories (India) P. Ltd, NH No.8, PB No.121, Abrama, Valsad-396 001. [PAN: AADCS 9914 R]	V.	Additional Commissioner of Income Tax, Valsad Range, Palak Arcade, Tithal Road, Valsad-396 001.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri P.M. Jagasheth, CA
राजस्वकीओरसे /Revenue by	Smt. O.P. Singh, CIT(DR)

सुनवाईकीतारीख/ Date of hearing:	05.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	06.12.2019

**आदेश /O R D E R**

**PER O.P.MEENA, AM:**

1. This appeal filed by the Assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Valsad [in short "CIT(A)"] dated 21-08-2014 for the assessment year 2005-06.
2. This sole ground relates to confirming the disallowance of Rs.20,06,376/- out of Travelling and Conveyance Expenses.
3. Brief facts are that the assessment was made u/s.143(3) on 27-12-2007 determining total income of Rs.2,72,91,030/- by making addition of Rs.28,19,391/-, which *inter alia* included addition of Rs.5,00,000/- out of travelling and conveyance expenses.

4. The assessee carried the matter before the ld. CIT(A) and thereafter before ITAT vide its order no.3901/AHD/2008 dated 16-12-2010 set-aside the order to the file of the AO. In the set-aside proceedings, the AO noted that the assessee has debited Rs.43,36,380/- as travelling and conveyance expenses as against Rs.21,57,410/- during the preceding year. The AO examined the details of travelling taken by the assessee and expenses incurred and found that expenses of Rs.20,06,376/- are not related to assessee's business, hence same were disallowed.

5. Being aggrieved, the assessee carried the matter before the CIT(A). Wherein it was submitted that the original disallowances were made at Rs.5,00,000/- and the matter was set-aside by the ITAT to the file of AO for further relief and verification. Whereas, the AO had enhanced the disallowance to Rs.20,06,376/- from original disallowance of Rs.5,00,000/-. Thus, the assessee has suffered worst as against request for a relief which is not justified. The assessee also relied on the decision of Mumbai ITAT in the case of Kellogg India Pvt. Ltd v. ACIT [ITA No.6005/MUM/2010, dated10-08-2012]. Therefore, it was requested that disallowance either should be restricted to Rs.5,00,000/- only as made in the original assessment or relief be allowed. However, the CIT(A) observed that the ITAT has set-aside and directed the AO's afresh decision after given opportunity of being heard, therefore, contention of the assessee was not found convincing and accordingly disallowance

made by the AO at Rs.20,06,376/- considering non-business nature of expenses were.

6. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel submitted that disallowance made in original assessment cannot be enhanced in the set-aside assessment as held by the ITAT 'A' Bench, Mumbai in the case of Kellogg India Pvt. Ltd. v. ACIT [in ITA no. 6005/Mum/2010, dated 10-08-2012]. Further, the disallowance assessee 50% of the total expenses is on higher, hence same may be restricted 2 to 3.5%.

7. *Per contra*, the ld. Sr. Departmental Representative (DR) supported the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. It is settled proposition of law that the appellate tribunal u/s.254(1) of the Act had no power to take back the benefit conferred by the Assessing Officer (AO) or enhanced assessment. Once the matter has been restored by the tribunal the income cannot be enhanced from what was determined at the time of original assessment proceedings, which was the subject matter of dispute before the tribunal. This proposition of law has been upheld by the Hon'ble Supreme Court in the case of Hukumchand Mills Ltd. v. CIT (1966) 62 ITR 232 (SC) and now has been reiterated in MCorp Global (P) Ltd. v. CIT (2009) 309 ITR 434 (SC). Therefore, in view of this proposition of law the enhancement in the disallowance of travelling and conveyance by 50%

cannot be sustained. However, the original of Rs. 5,00,000/- were made on *ad hoc* basis, and there is some element of personal in nature. Therefore, considering the nature of expenses, and personal nature and business expediency disallowances of Rs.43,36,380/- are restricted to Rs.4,00,000/-. In view of this fact, this ground of appeal is partly allowed.

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

10. Order pronounced in the open court on 06.12.2019.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(O.P.MEENA)  
ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 6<sup>th</sup> December, 2019/S. Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

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By order

Assistant Registrar, Surat