

आयकर अपीलीय अधिकरण , ' ए ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्यएवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3040/Chny/2018

निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Irbaz Shoe Company,
No. 2(487), Kilpauk Garden Road,
Chennai – 600 010.

The Income Tax Officer,
Vs. Non-Corporate Ward 10(2),
Chennai.

[PAN: AAIFI 5586M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. T. Vasudevan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. AR V Sreenivasan, JCIT

सुनवाईकीतारीख/Date of Hearing : 18.12.2019

घोषणाकीतारीख/Date of Pronouncement : 09.03.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The assessee filed this appeal against the order of Commissioner of Income Tax (Appeals)-12, Chennai in ITA No. 75/CIT(A)-12/13-14 dated 20.08.2018 for assessment year 2009-10.

2. The Ld. AR submitted there is 12 days delay in filing the appeal.

The partners of the firm were away from the station and hence, the

appeal papers could not be signed. As soon as they came, the appeal papers were signed and filed. Since, the delay is neither wilful nor wanton, due to the circumstances beyond the control of the assessee it was pleaded that the delay in filing the appeal may be condoned.

3. We heard the rival parties and condone the delay.

4. M/s. Irbaz Shoe Company, the assessee, is a manufacturer and exporter of shoe uppers etc. While making the assessment for assessment year 2009-10, the Assessing Officer found that the assessee has incurred expenditure under the head car maintenance/general expenses and postage. He required the assessee to produce vouchers and bills in support of such expenditure and observed that in some cases either the bills/vouchers are not produced or the bills/vouchers produced were found to be self-made. Therefore, he disallowed Rs. 2,49,000/- and completed the assessment. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) dismissed the appeal. Aggrieved against that order the assessee filed this appeal.

5. The Ld. AR submitted that the assessee has incurred the impugned expenditure for the purpose of business and he supported that such expenditures are wholly and exclusively incurred for the purposes

by comparing the corresponding figures of assessment years 2008-09, 2009-10 & 2010-11. He submitted that without pointing out the specific defects vis-a-vis the bills/vouchers, the Assessing Officer disallowed the expenditure on surmises. On similar issue, this tribunal has already allowed the assessee's appeal in the assessment year 2010-11, in ITA No. 1435/Mds/2015 dated 12.02.2016. Therefore, he pleaded that the assessee's appeal may be allowed. Per contra, the Ld. DR submitted that the assessee has not produced the bills/vouchers before the appellate authority and hence, he supported the order of the Ld. CIT(A).

6. We heard the rival submissions and gone through the relevant material. We find that the Assessing Officer has not specifically pointed out which of the bills/vouchers on which he was unsatisfied and for what reasons. Further, the relevant portion of this tribunal order, supra, relied on by the assessee is extracted as under:

"Ground no.2:- Addition of `1,90,080/- being disallowance of vehicle maintenance expenses on estimate basis:- Assessing Officer

9. During the course of assessment proceedings, it was observed by the learned Assessing Officer that the assessee had debited its profit and loss account on account of vehicle maintenance of Rs. 38,01,617/- . Since certain vehicles on which such expenditure incurred were not owned by the assessee, the learned Assessing Officer opined that the expenditure claimed by the assessee was on the higher side and therefore disallowed 5% of the same. On appeal, the learned Commissioner of Income Tax (Appeals) confirmed the order of the learned Assessing Officer accepting his view.

10. We do not find any merit in this addition made by the Revenue on the basis of surmises and conjectures. Any expenditure incurred towards the

business of the assessee is allowable as deduction as per provisions of the Act, unless it is proved that those expenses were not incurred for the business of the assessee. Therefore, we hereby delete the addition of Rs.1,90,080/-made by the learned Assessing Officer on the basics of presumption that the expenditure incurred by the assessee is excessive, which was further sustained by the learned Commissioner of Income Tax (Appeals)."

In view of the above facts and circumstances, following the above order, the disallowance made on the basis of surmises and conjectures of the AO cannot be sustained. Therefore, the assessee's appeal is allowed.

7. In the result, the assessee's appeal is allowed.

Order pronounced on Monday, 09th March, 2020 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 09th March, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF