

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'बी.', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 1269/CHD/2019

निर्धारण वर्ष / Assessment Year : 2016-17

M/s Partap Fabrics Pvt. Ltd., Village – Kesri, Shahabad Saha Road Ambala Cantt.	बनाम VS	The DCIT, Circle, Ambala.
स्थायी लेखा सं./PAN /TAN No: AAFCP5213Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Rohit Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Daya Inder Singh Sidhu, Addl. CIT

तारीख/Date of Hearing : 16.06.2020

उद्घोषणा की तारीख/Date of Pronouncement : 17.06.2020

आदेश/ORDER

PER DIVA SINGH

By the present appeal, the assessee assails the order dated 19.06.2019 of CIT(A) Panchkula pertaining to 2016-17 assessment year on the following ground :

“That the ld. CIT(A) has erred in law and on facts in confirming lump sum disallowance of 10% vehicle expenses amounting to Rs. 2,04,936/-.”

2. Inviting attention to the assessment order, the ld. AR submitted that general observations have been given for making disallowance @ 1/6th of the total Vehicle Expenses claimed. For ready reference, para 4 of the assessment order to

which our specific attention was invited is reproduced hereunder :

4. Disallowances out of Vehicle Expenses:- *The assessee has debited Rs 20,49,365/- as Vehicle Expense. Since the use of car by the assessee and his family members for personal usage and non-business purposes is not altogether ruled out, hence, 1/6th of these expenses which comes to Rs 3,41,560/- is disallowed and added to the income of the assessee.*

3. Inviting attention to para 5.2 of the impugned order, it was his submission that the ld. CIT(A) has reduced the disallowance to the extent of 1/10th of the expenses claimed. It was his submission that the assessee is a Private Limited company and in terms of the settled legal principles, a disallowance of personal user cannot be made. Attention was invited to the order dated 28.03.2018 in ITA 1250/CHD/2017 in the case of M/s Vallabh Yarns Pvt. Ltd. (copy filed at pages 39-42) Drawing specific attention to paragraph 8 of the order, it was his submission that no disallowance, infact, could have been made. The specific para is reproduced hereunder :

“8. We have heard the contentions of both the parties and we find merit in the contention of Ld, Counsel for the assessee that no disallowance on account of personal use of car and telephone expenses can be made in the case of company assesses that too on an adhoc basis. The reliance placed by the assessee in this regard on the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Dinesh Mills Ltd. (2005) 148 Taxman 76 (Guj) wherein it has been categorically held that no personal use of car or telephone expenses can be attributed to company assessee and, therefore, cannot form the basis for disallowing the expenses. This proposition has been reiterated in a number of other decisions also as pointed out by the Ld. Counsel for the

assessee. The Ld. DR has not brought to our notice any contrary decision in this regard. In view of the above, we delete the disallowance made of 1/6th of telephone and car expenses incurred by the assessee amounting to Rs.46,514/- & Rs. 1.9 1,275/- respectively.

Ground No. 1(a) & (b) raised by the assessee are, therefore, allowed.

4. The ld. AR further submitted on query that the assessee has been in existence for the last 15-16 years and no such disallowance has ever been made. On reading of para 4 of the aforesaid order of the ITAT, it is seen that in the facts of the said case, the disallowance was made on the grounds that “.....no log book had been maintained by the assessee for the same and, therefore, the possibility of incurring the said expenses for personal purposes could not be ruled out.”

5. The ld. DR relied upon the impugned order. On a specific query as to whether any disallowance has been made in the past, he stated he was not in a position to address the same.

6. In the light of the facts available on record and in the absence of any rebuttal on the position of law as considered by the Co-ordinate Bench where no logbook was being maintained, the disallowance proposed stood quashed on the grounds that no personal user can be attributed to the assessee company as held in the case of CIT Vs Dinesh Mills Ltd. (2005) 148 Taxman 76 (Guj). Accordingly, considering the facts of the present

case where the past history is in assessee's favour and observations made are general relying on the precedent cited where there is no rebuttal by the Revenue, the ground is allowed. The appeal of the assessee, consequently is allowed. Said order was pronounced in the Open Court at the time of hearing itself.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 17th June,2020.

Sd/-

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar