

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)
I.T.A. No. 6787/Mum/2018 (Assessment Year 2014-15)

ACK Media Direct Limited (Earlier known as ACK Media Direct Private Ltd.) 7 th Floor, AFL House, Lok Bharti Complex, Marol Maroshi Road, Andheri-E Mumbai-400 059. PAN : AAACQ1195K (Appellant)	Vs.	ITO-9(1)(1) Room No. 205 2 nd Floor Aayakar Bhavan M.K. Road New Marine Lines Mumbai-400020. (Respondent)
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Assessee by	Shri Manoj Mundra
Department by	Shri Ravinder Sindhu
Date of Hearing	14.01.2020
Date of Pronouncement	01.06.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of learned CIT(A) dated 18.9.2018 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :-

1. Under the facts and in Law, the Hon. Commissioner of Income Tax (A) [CIT(A)], erred in confirming disallowance of Sales Promotion Expenses of Rs. 8,252,648/-.
- 1.01 The Learned CIT(A) failed to appreciate the submission made by the appellant during the course of appeal proceedings.
- 1.02 The Learned CIT(A) erred in stating that inspite of multiple opportunities, the appellant could not furnish necessary evidences in support of expenses incurred. The Learned CIT(A) failed to appreciate the documentary evidences submitted by the appellant to substantiate genuineness of the expenses.

1.03 The Learned A.O. erred in confirming addition without pointing out any deficiency in the documentary evidences submitted by the appellant.

3. Brief facts of the case are that assessee is engaged into the business of magazines subscription, online sales and direct marketing. The assessing officer made disallowance of sales promotion expenses on the ground that the parties to whom the payments have been made have not responded to his notice issued under section 133 (6) of the I.T. Act. The assessing officer did not issue any summon under section 131 to these parties. No other cogent reason was given by the assessing officer except that assessee has not been able to produce these parties. Assessee in this regard submitted the invoices. The payments were made through banking channels. The invoices duly contained the sales tax registration No. of the parties. No infirmity in this regard was pointed out by the assessing officer. The order of the assessing officer in this regard may be gainfully referred as under :-

“The assessee has debited an amount of Rs. 116.90 lakhs in the Profit & Loss Account under the head Sales Promotion Expenses. During the course of assessment proceedings assessee was asked to file party wise details of the Sales Promotion Expenses which were duly filed.

Notices u/s.133(6) were sent to the following parties calling for details of the transactions carried out with the assessee :-

Sr.No.	Name of the party	Amount of expenses claimed
1	Google India P. Ltd.	11,72,289
2	Coco's Cart	23,80,447
3	Vision Marketing & Information Services P. Ltd.	15,49,446
4	Metler Media P. Ltd.	8,10,230
5	Kenscio Digital Marketing P. Ltd.	37,42,514
	Total	96,54,926

There was no response to the said notices sent from the parties at Sr. No. 1, 3 & 5. The notice sent to the address of Party at Sr. No.4 was returned unserved even from the latest address provided by the assessee. Reply was received from party at Sr.No.2, however on going through the ledger account submitted it was seen that the assessee had shown more expenses to the tune of Rs.9,78,169/-. In this situation, the assessee was asked to produce the parties and to reconcile the difference of Rs.9,78,169/- in respect of party

at Sr.No.2 and to show cause as to why the said amounts should not be disallowed in case of failure on the part of the assessee. In response, assessee vide letter dated 21/11/2016 has submitted as under:-

"Our client has received your above referred notice asking to provide reconciliation between our books of account and the copy of the account submitted by the party named Coco's Cart for the amount of Rs.9,78,169/- in respect of Sales Promotion Expenses incurred during the said assessment year. In response to the same, we would like to submit that we have already submitted the ledger account of the said party wherein your honour will find that we have duly submitted the details of total expenses incurred by us of Rs.23,80,447/-. As regards difference of Rs.9,78,169/-, we would like to submit that in some cases the payment to said company is made by group company of assessee which is reimbursed by the assessee.

Further in respect of the other parties i.e. Google India (P) Ltd., Visio Marketing & Information Services (P) Ltd., Metler Media (P) Ltd. and Kenscio Digital Marketing (P) Ltd., we would like to state that presently the management and the accounting staff of the assessee company has changed and the assessee company is not having any transaction with the said parties and therefore it is not possible to get the present whereabouts of the said parties. However, we would like to submit that we have submitted the details in respect of expenses incurred by us and all the expenses are in the nature of business expenditure as the same was duly incurred for business operations."

The above submissions have been considered but are not acceptable. The assessee has not been able to produce the parties or provide the proper addresses of the parties. Hence, the onus cast upon the assessee has not been discharged in spite of several opportunities given to it. As regards the excess expenses of Rs.9,78,169/- claimed in respect of Coco's Cart, the assessee has merely stated that in some cases the payment to said company is made by group company of assessee, but no evidence in this respect has been submitted. Hence, as the assessee has not been able to reconcile the difference in the expenses with regard to Coco's Cart the amount of Rs. 9,78,169/- is hereby disallowed. The expenses in respect of the other four parties are also disallowed as assessee has not been able to submit any confirmation or produce the parties in spite of specific direction to do so. Hence, the said expenses cannot be said to have been proved by the assessee. Accordingly, the Sales Promotion Expenses to the tune of Rs. 82,52,648/- (1172289 +978169 + 1549446 + 810230 +3742514) is hereby disallowed and added back to the total income of the assessee."

4. From the above it is evident that except for the finding that assessee has not been able to produce the parties no cogent material has been brought by the assessing officer to make the disallowance. Assessee is engaged into the business of sales and marketing. No material is on record that these expenses

are excessive or abnormal. The parties to whom the payments are made are well-established parties. It is beyond comprehension as to how the assessing officer's notes that he is not in possession of the correct address of Google India. The assessee has duly furnished the addresses. When there was no response, the assessing officer could very well have issued the summons under section 131. In these circumstances without issuing any summon to the concerned parties the ignorance of all the documentary evidence for the payment and its genuineness is not at all sustainable. The disallowance is based upon surmise and conjecture. The learned CIT appeals has also primarily dismissed the appeal for non-prosecution by concluding as under :-

“During course of appellate proceeding opportunities were granted to the appellant on 04.06.2018, 11.06.2018, 22.06.2018, 23.08.2018, 14.09.2018 and 17.09.2018. In spite of multiple opportunities, appellant could not furnish necessary evidences in support of expenses incurred, therefore, I have no reason to deviate from the findings given by the AO in the assessment order hence ground raised by the appellant is dismissed and disallowance made by AO is confirmed.”

5. We find that the CIT(A) has not applied any mind. He has copied the order of the assessing officer and thereafter virtually dismissed the appeal for non-prosecution. Such an order is not at all legally sustainable. As regards the lack of evidence is concerned, when there are invoices and books of account, what else is required has not been spelt out by learned CIT(A). He has not at all referred that the Assessing Officer was actually looking for the assessee to produce these parties. An appellate order showing such lack of application of mind is not sustainable.

6. In the background of aforesaid discussion in our considered opinion the orders of authorities below are not sustainable. Accordingly we set aside the orders of authorities below and delete the addition.

7. In the result this appeal filed by the assessee stands allowed.

Order has been pronounced in the Court on 01.6.2020.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/06/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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