

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH  
MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM & SHRI VIKAS AWASTHY, JM**

**ITA No. 1123/Mum/2019  
(Assessment Year: 2014-15)**

Shri Vikaschand Omprakash Agarwal, 501, Embassy Centre, 5 <sup>th</sup> Floor, Nariman Point, Mumbai-400021.	Vs.	I.T.O.-17(3)(5), 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>PAN/GIR No.AAYPA 7825 K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri S.L. Jain (CA)
Revenue by	Shri Amit Pratap Singh (DR)
<b>Date of Hearing</b>	<b>11/02/2020</b>
<b>Date of Pronouncement</b>	<b>12/03/2020</b>

**आदेश / ORDER**

**PER: R.C. SHARMA, A.M.**

This is the appeal filed by the assessee against the order of the Id. CIT(A)-28, Mumbai dated 15/01/2019 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. First grievance of the assessee relates to upholding ad hoc disallowance of expenses.
3. Rival contentions have been heard and record perused. The assessee is involved in manufacturing of plastic items. During the

course of scrutiny assessment, the A.O. made ad hoc disallowances of various expenses. By the impugned order, the Id. CIT(A) has given partial relief and the assessee is in further appeal before the ITAT.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that a survey was carried out on the assessee at its head office, its Daman factory and Hardwar factory. The assessee was asked to reconcile physical cash found at Mumbai of Rs.92,000/- for all concerns as against cash in hand as per cash book of various concerns of Rs.8,76,042/- as on 31/08/15. It was clarified at the time of recording of the statement that expense vouchers for August were to be entered in the cash book in various concerns. In this regard, 34 vouchers for expenses to be booked in different concerns and after considering the personal withdrawals effected by proprietors, the cash balance reconciled. The assessee was asked to reconcile the petty cash balance as available at Haridwar factory. The cash balance as per petty cash book as on 15/08/15 at plant was Rs.2,31,049/-after considering the expenses to be booked for the balance period of 15/08/15 to 31/08/15, the closing cash balance as on 31/08/15 was Rs.1,76,690/- which was also reconciled with the physical cash found during the course of survey in the premises. Necessary reconciliation along with details are placed. Further, an amount of Rs.5,63,561/- was reflected as cash balance as

per books of account, the said cash balance reflected comprises of cash in hand at Head Office of Rs.96,380/- and cash in hand at Haridwar of Rs.4,67,181/-, the total of which is Rs.5,63,561/-. Out of said cash balance effect for expenses for the period 01/08/15 to 31/03/15, which amounts to Rs.2,90,491/- was to be reduced. After reducing the said from the balance of Haridwar of Rs,4,67,181/- the closing stock balance would be Rs.1,76,690/-. The A.O. did not agree with the assessee's contention and disallowed 10% of staff welfare expenses, travelling and conveyance expenses and general expenses. 25% of expenditure incurred on insurance, repairs and maintenance, vehicle expenses and depreciation of motor cars was also disallowed. The A.O. also disallowed salary paid to three different units totaling to Rs. 10,00,000/-. By the impugned order, the Id. CIT(A) has restricted the disallowance on salary and wages to the extent of Rs. 2.00 lacs. The disallowance on account of staff welfare expenses, travelling and conveyance expenses and general expenses was restricted to 5% as against addition of 100% made by the A.O. Similarly the expenditure on account of insurance, repairs and maintenance, vehicle expenses and depreciation of motor cars were reduced to the extent of 12.5% as against the addition of 25% made by the A.O. However, neither the A.O. has given clear reasoning for the disallowance so made nor the Id.

CIT(A) has given any justification for upholding 50% of the disallowances. The precise observation of the Id. CIT(A) was as under:

*“5.3 I have duly considered the facts and circumstances as regards the adhoc disallowances from the 8 types of expenditure. I find that most of the disallowances are of adhoc nature on the basis that according to the AO, during the survey proceedings certain defective vouchers were found and there was some cash balance which was not tallying with the balance as per books. Therefore, according to the AO, in case of expenses in cash, inflation cannot be ruled out and third-party evidence is not available in case of certain cash vouchers. Whereas, according to the appellant, the salary, wages and bonus expenses are fully verifiable and justifiable and hence no disallowance is warranted on this count. Regarding the other disallowances as per table, it is stated that the disallowance is far too excessive.*

*5.4 I find that in the above expenditures, it is a case of relative and counter claims by the appellant and the revenue. This is because, neither side can state with complete certainty that their respective stand is the gospel and the correct one. Therefore, in the balance of convenience and in the interests of fair play, I am inclined to partly allow the claims of the appellant.”*

Thus, it is clear that no justification was given by the A.O. nor by the Id. CIT(A) for making disallowance of part of the expenses.

5. On the other hand the Id. AR placed on record similar expenses claimed in the earlier years was allowed even in the assessment framed U/s 143(3) of the Act. We also observe that against the turnover of Rs. 5602.70 lacs the assessee has shown profit of Rs. 950.29 which works

to be 15.15% which appears to be very reasonable. Looking to the profit shown by the assessee in earlier and subsequent year. Accordingly we do not find any justification for the ad hoc disallowance made by the A.O. without pointing out any defect in the expenditure bills or books of account. Accordingly, the A.O. is directed to delete the disallowances.

6. The next grievance of the assessee relates to thrusting upon the assessee's claim of additional depreciation U/s 32(1)(iii) of the Act. In the return of income, the assessee has not claimed additional depreciation, however, the A.O. reduced assessee's income by Rs. 31,885/- being amount of additional depreciation, which was confirmed by the Id. CIT(A).

7. We have considered rival contentions and found that during the course of assessment, the A.O. found that the assessee has not claimed additional depreciation on plant and machinery, however, the A.O. reduced assessee's income amounting to Rs. 31,885/- being the amount of additional depreciation. In terms of provisions of Section 32(1)(iii) of the Act, the assessee is entitled for allowance of depreciation on its block of assets at such percentage as prescribed under the Rules. As per sub-section (1)(ii) of Section 32, explanation 5 so introduced by Finance Act, 2001 depreciation will be allowable

whether or not claimed in computation of income. Sub-section (1)(ia) was introduced by Finance Act, 2005 in case of new machinery or plant which has been acquired and installed after 31<sup>st</sup> March, 2005 by an assessee engaged in the business of manufacture or production of any article of thing, a further sum equal to 20% of actual cost of such machinery or plant shall be allowed as deduction. As per the Id AR, such additional depreciation is allowed by way of incentive for acquisition and installation of new plant and machinery it is not in the nature of normal depreciation which is required to be claimed in the P&L account. Such depreciation is claimed in the computation of income only. As per the Id AR, the CBDT while explaining provision of Finance Act 2005 under circular No. 3 of 2006 dated 27<sup>th</sup> February, 2006 in para 3.6 observed:

*"In order to encourage investment, the Finance Act, 2005 has amended section 32 to increase the rate of additional depreciation to twenty percent on new machinery and plant other than ships and aircrafts, acquired and installed after the 31<sup>st</sup> day of March, 2005, and dispensed with the condition of additional depreciation to be allowed to a new industrial undertaking and the condition of expansion in installed capacity."*

8. On the other hand, the Id DR has relied on the orders of the authorities below.

9. We have considered the rival contentions and considered the provisions of Section 32 of the Act as well as the CBDT circular filed by the Id AR. From the record, we found that while thrusting upon additional depreciation, the A.O. has treated both normal depreciation and additional depreciation at par, in so far as both falls u/s 32 of the Act. However, no justification has been given by the assessee for not treating the additional depreciation at par with the normal depreciation. Even though the additional depreciation is in the nature of incentive, but it is also provided U/s 32 of the Act which after insertion of Explanation 5 is to be allowed whether claimed or not claimed. Therefore, in the substantial interest of justice, we restore the matter back to the file of the A.O. with the direction to the assessee to justify its stand that additional depreciation is not in the normal depreciation so as to come out of mischief of Explanation 5 to Section 32(1)(ii) of the Act. We direct accordingly.

10. In the result, appeal of the assessee is allowed in part, in terms indicated hereinabove.

Order pronounced in the open court on 12<sup>th</sup> March, 2020.

**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 12/03/2020  
\*Ranjan

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**