

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 6455/Del/2014
(Assessment Year: 2006-07)

Hindustan Coca-Cola Marketing Company Pvt. Ltd, Orchid Centre, 3 rd Floor, DLF Gold Course Road, Sect-53, Gurgaon PAN: AABCH1541D	Vs.	DCIT, Circle-12(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Sachit Jolly, Adv Shri Rohit Garg, Adv Ms Disha Jham, Adv
Revenue by:	Ms. Meenakshi Goswani, CIT DR
Date of Hearing	10/12/2020
Date of pronouncement	22/01/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT (A)-X, Delhi dated 29.09.2014 for the Assessment Year 2006-07, raising the only issue in the appeal that the Id CIT (A) has erred in restricting the disallowance on account of excess shortage/ breakage to 30% merely following appellants own case decided by the Id CIT (A) in subsequent years (AY 2008-09). The contention in the ground of appeal of the assessee is that Id CIT(A) has failed to appreciate that the expenditure incurred by the appellant due to pulling back of inventory from the market on account of expiry of product are normal business expenditure allowable as deduction in accordance with the provisions of the Act.

2. Brief facts of the case shows that the assessee is a company engaged in the business of trading of non-alcoholic beverages. It filed its return of income on 30.11.2006 declaring a loss of Rs. 25,80,27,830/-. The issue in this appeal is disallowance of write off excess shortage of the inventory by the assessee. The fact shows that during the year under consideration it was seen that as compared to the earlier year Assessee Company had claimed excess breakage and shortage. In its reply dt. 23/12/2008 the assessee company had given reasons for substantial increase in shortage. As per assessee, approximately 60000 cases were destroyed to floods in Mumbai and against the damages insurance amount of Rs. 1.12 crores were received and shown as other income. Approx. 100000 cases were pulled back by the assessee from market in view of exceptional quality issues. The assessee was asked to adduce evidence and explain nature of these exceptional quality issues. It was further asked as to whether any claim was launched before Hindustan Coca Cola Beverages Pvt. Ltd., the company that manufactures the good for raising the quality issue. In reply dt. 26/12/2008 the assessee changed its stand and claimed that the pulling back of inventory from the market was on account of expiry of the products i.e. best before date [BBD] and that no claim has been made because risk and rewards of the products are attached to the assessee company. Ld AO considered it and found to be unsatisfactory for the reason that firstly, the assessee company claimed that the products were removed from the market due to exceptional quality issue but when it was asked to produce the evidences, it changed its stand and claimed the loss on account of expiry date of the product. The fact of the matter is that in this type of business every year there would be products having expired shelf life. This is a normal shortage, which arises to all the companies engaged in this type of trade. The assessee company did not produce any evidence to show that the risk of stock was its own. It never produced any agreement with its distributors to show that it was obliged to even bear losses on account of sales already made to the distributors for best before date stock. In these circumstances and further with no evidence produced to actually

substantiate the claim that these stocks were really called back from the market and in absence of any claim being made on the manufacturing company which is normal in such type of business, the Id AO held that the claim of exceptional inventory loss worth Rs. 20898501/- is not acceptable and addition of Rs. 2089501/- is made to the income of the assessee.

3. This issue was challenged before the Id CIT(A) who dealt with this issue as under:-

“Ground No.5 of appeal is against the addition of Rs.2,08,98,501/- by by disallowing the deduction claimed on account of shortage in stock due to the pulling back of inventory from the market on account of the expiry of date of product. Before the A.O., the appellant has claimed that 60,000 cases were destroyed in floods in Bombay and against the damages, insurance amount of Rs.1.12 crores was received and shown as other income. Further, one lakh cases were pulled back by the appellant from the market in view of exceptional quality issues i.e. on account of expiry of the product (best before date) and no claim has been made because risk and rewards are attached to the appellant company. However, no evidences were produced before the A.O. in the shape of any agreement with the distributors and, therefore, exceptional inventory loss claimed by the appellant was disallowed by the A.O. During the appellate proceedings, the appellant submitted the same arguments which were forwarded by it before the A.O. However, it was argued that to maintain the brand value of the product, such action on the part of the appellant was necessary. Therefore, the claim was allowable.

On considering the facts of the case, it was observed that the appellant had made similar claim in A.Y. 2008-09 wherein Ld.crr(A)-XV, New Delhi in the appellant's own case in A.No.386/10-11 dt. 27-01-2014 for A.Y. 2008-09 have given the following findings:

"On careful consideration of the facts of the case, I find that keeping in view the nature of the products of the appellant company i.e. bottling and sale of various beverages of the Coca Cola brand, breakage of bottles in transit cannot be ruled out. Such breakage is also due to mishandling, and in terms of BDD policy of the company, certain products which have out-lived the prescribed expiry date, need to be destroyed. The appellant has furnished details of such losses incurred during the current year and informed that during the current year, the loss was 0.3% of the stock which is much lower than 0.5% of the stock as in the immediately preceding previous year. In respect of the breakage of the inventory losses, the appellant could only furnish the details in

respect of the loss in respect of finished goods. Keeping in view the above facts, I hold that the possibility or having any inventory loss in the business of the appellant company cannot be ruled out. Keeping in view the above facts, I hold that the possibility of having any inventory loss in the business of the appellant cannot be ruled out. Keeping in view the magnitude of the business of the appellant company and in particular the fact that the appellant has shown sales of inventory Rs.4,81,22,16,378/- with closing stock of 2,15,62,761, the inventory loss as a proportion of sales is not very significant. No adverse evidence was brought on record by the AO. Under the circumstances, in the interest of justice, I allow 70% of the inventory loss claimed by the appellant, since the appellant was not able to furnish further break up of various items embedded under, the inventory loss other than that of the finished goods. In view of the above, the appellant gets partial relief of Rs.30,65,538/-."

On considering the facts in entirety, it is observed that the practice adopted by the appellant has not changed from year to year and it is maintaining the same method. However, in absence of complete details and evidences the entire claim of the appellant cannot be allowed. At the same time keeping in mind the quality of the product it cannot be denied that the practice adopted by the appellant was necessary for maintaining the brand quality and market value of the product. Therefore, it would be reasonable and justified if the inventory loss claimed by the appellant is restricted at 70% of its claim as upheld by the Ld.CIT(A)-XV, New Delhi. The A.O. is directed to recompute the quantum of disallowance on this count. The appellant gets consequential relief. This ground of appeal is partly allowed."

4. Therefore, the assessee is in appeal before us.
5. We have heard Shri Sachit Jolly, Id AR on behalf of the assessee and Ms. Meenakshi Goswami, CIT DR, Id DR on behalf of the revenue.
6. We have carefully considered the facts of the case that the assessee stated that approximately 10000 cases were pulled back by the assessee from the market in view of the exceptional quality issues. The assessee submitted that the above quality issue is the pulled back of inventory from the market on account of expiry of the products. The assessee submitted that there is a life span of the beverages and beyond that it cannot be consumed and therefore, it has to be pulled back from the market. There cannot be any claim on this issue from anybody else as it is product risk, which is attached to the assessee only. The Id

AO did not believe and disallowed the above claim. The Id AO held so that there is no evidence with the risk of stock was on the assessee. The Id CIT(A) relying on his own decision for AY 2008-09 allowed 70% of the such claim and confirmed the disallowance to the extent of 30% thereof and therefore, the assessee is in appeal. We find that for AY 2008-09 the issue was identical. When for AY 2008-09 the matter reached coordinate bench the assessee did not press this ground for smallness of the amount, however, for AY 2006-07 i.e. the impugned assessment year the assessee is pressing this disallowance. Therefore, the order of the Id CIT (A) for AY 2008-09 is perused and part of which is reproduced by the Id CIT (A) while deciding the appeal of the assessee for the impugned assessment year. In that particular case the Id CIT (A) clearly noted the BDD policy of the assessee company. He further noted that the assessee furnished the details in respect of loss of finished goods. The BDD policy necessarily applies to the finished goods only. The Id CIT (A) further accepted that possibility of having the inventory loss in the business of the appellant cannot be ruled out. He further considered annual turnover of the assessee and stated that claim of inventory loss is not significant. It was further noted that the Id AO has not brought on record any adverse evidence still he reached at a conclusion to allow only 70% of such loss. Even otherwise, the assessee has claimed such loss on account of passing of the of the expiry date of the finished product of the assessee. The value of such goods is as such Nil as having become non-marketable. It is not the case of the revenue that the assessee has derived any revenue from sale of such goods. Even otherwise, it is not possible. It is also not the case of the Id AO that such losses are claimed by the distributors. Naturally, the distributors will never make such claim on their account when they are clearly distributing stock only. Naturally, that is the risk of marketing company. Therefore, there is no reason to restrict it at an adhoc figure. In view of this, we do not find any justification to restrict allowance of such claim to the extent of 70%. According to us, it should be allowed in its entirety. Such loss is neither stated to be contingent or non-

existent. In view of this, we reverse the order of the Id CIT (A) and direct the Id AO to delete the additions/ disallowances of Rs. 20,89,501/- being loss on account of passing of the expiry date of the product. Accordingly, disallowance of Rs. 20,89,501/- is directed to be deleted. Accordingly, solitary issue in the appeal of the assessee is allowed.

Order pronounced in the open court on 22/01/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 22/01/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi