

आयकर अपीलिय अधिकरण, "सी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.1347/Chny/2019
निर्धारण वर्ष/Assessment Year:2010-11

Smt. S. Mahima,
No. 18/32, Dr. Ambedkar Road,
Kodambakkam, Chennai 600 024.
[PAN: AKKPM9079R]

The Assistant Commissioner of
Income Tax, Business Circle IV,
Chennai.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 03.12.2020
घोषणा की तारीख /Date of Pronouncement : 16.02.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 7, Chennai dated 31.03.2019 relevant to the assessment year 2010-11. In the grounds of appeal, the assessee has challenged the confirmation of addition made under section 68 of the Income Tax Act, 1961 ["Act" in short] as well as confirmation of disallowance of sales promotion expenses.

2. Brief facts of the case are that the assessee is an individual and carrying of manufacturing & selling Pharmaceuticals items. She filed the return of

income for the assessment year 2010-11 on 07.10.2010 declaring total income of ₹.28,14,174/- The return was processed under section 143(1) of the Act and since the case was selected for scrutiny, notice under section 143(2) of the Act was issued and served on the assessee. After considering the details furnished by the assessee, the assessment under section 143(3) of the Act was completed by making various additions.

3. With regard to the addition under section 68 of the Act, the assessee was required to furnish confirmation from the creditors. The AR of the assessee was not able to furnish any confirmation for the following creditors:

1.	Drashti enterprises	₹.	13,18,144
2.	Kiran Traders	₹.	6,40,342
3.	Pearl Pharma Chem	₹.	13,98,800
4.	Vacumech Engg.	₹.	6,07,920
	Total	₹.	39,65,206

It was stated that the assessee had stopped business operation with the creditors and therefore unable to contact the creditors for obtaining confirmation. Since the assessee could not furnish confirmation from the creditors, the above credits were disallowed and brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee had stopped business operations and therefore, she was not in a position to produce the

confirmation. By raising a specific ground as ground No. 5, it was the submission that these credit entries were not recorded in the books of accounts during the relevant assessment year and these entries were carried forward balances from preceding previous years. It was further submission that the assessee's inability to produce the confirmation cannot deem the creditors to be not genuine, when all the other details to prove the genuineness of the creditors were duly submitted and prayed for deleting the addition. On the other hand, the Id. DR supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, since the assessee had stopped business operations, she was not in a position to produce the confirmation from the trade creditors to the extent of ₹.39,65,206/- and thus, the Assessing Officer treated the same as unexplained cash credit and brought to tax under section 68 of the Act. Under section 68 of the Act, any sum credited in the books of the assessee in any financial year shall be treated as income of the assessee during such financial year if the assessee offers no explanation about the nature and source of such credit or explanation offered by the assessee about the nature and source of such credit is not satisfactory in the opinion of the Assessing Officer, such credit is referred to as

unexplained cash credit. However, by raising a specific ground it was the contention of the assessee that these credit entries were not recorded in the books of accounts during the relevant assessment year and these entries were carried forward balances from preceding previous years. On perusal of the orders of authorities below, it is not clear as to whether the above credits were opening balance of the earlier assessment year or relevant assessment year under appeal, because, section 68 of the Act applies only to any sum credited in the books of the assessee in the financial year relevant to the assessment year under appeal. In the case of KNR Roofing Pvt. Ltd. v. ACIT in I.T.A. No. 3125/Bang/2018 dated 20.09.2019, the Bangalore Benches of the Tribunal was of the opinion that under section 68 of the Act, it is only the credit entry appearing in the books of account of an assessee for the relevant previous year, that can be treated as unexplained cash credit in the absence of proper explanation by the assessee and therefore, the opening balances of preceding previous years cannot be added under section 68 of the Act. In view of the above, the Assessing Officer is directed to verify as to whether the above credit entry appearing in the books of account of the assessee for the relevant previous year or preceding previous years and decide the issue in accordance with law after affording an opportunity of being heard to the assessee.

6. The next ground raised in the appeal of the assessee relates to disallowance of sales promotion expenses to the extent of ₹.22,64,048/-. The

assessee has claimed to have incurred sales promotion and sales promotion material totalling to ₹.69,25,297/- towards purchase of complimentary items like Ball pens, telephones, wall calendars, Dr. Note Pads, etc. During the course of assessment proceedings, the AR of the assessee has submitted bills for ₹.46,61,249/- and the AR was not able to furnish the bills for sales promotion expenses to the extent of ₹.22,64,048/-. Accordingly, the Assessing Officer disallowed the same and brought to tax.

7. The assessee is in appeal before the Tribunal. By relying on the decision in the case of DCIT v. Heal Kraft India Pvt. Ltd. in ITA No. 2793/Chny/2017 & Ors dated 07.06.2019, the Id. Counsel for the assessee has submitted that the Circular No. 5/2012 is effective only from 01.08.2012 onwards and not applicable to earlier assessment years. On the other hand, the Id. DR supported the orders of authorities below.

8. We have heard the rival submissions. The point at issue is not with regard to the applicability of CBDT Circular No. 5/2012 dated 01.08.2012 in the assessment year 2010-11. Actually, under the head "sales promotion and sales promotion material", the assessee has claimed total expenditure to the extent of ₹.69,25,297/- for the purchase of complimentary items like Ball pens, telephones, wall calendars, Dr. Note Pads, etc., against which the AR of the assessee has submitted bills only for ₹ 46,61,249/- and for the balance

amount of ₹.22,64,048/- the AR of the assessee could not file any bills/vouchers. In the appellate order, the Id. CIT(A) has not given any findings on this ground. Assuming jurisdiction and after hearing both the parties, we proceeded to decide the ground on merits. For allowance of any expenditure, proper bills and vouchers are required for verification. In this case, in the absence of any bills/vouchers produced before the Assessing Officer or any higher appellate authorities for the amount of ₹.22,64,048/- incurred for sales promotion and sales promotion materials, the said amount is liable to be disallowed. Accordingly, the expenditure of ₹.22,64,048/- disallowed by the Assessing Officer for want bills/vouchers stands confirmed. Thus, the ground raised by the assessee is dismissed.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 16th February, 2021 at Chennai.

Sd/-
(S JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURUL RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 16.02.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.