

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.565/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2015-16)

Ritik Creamics Pvt. Ltd. 502, 2 nd floor Bengal Chemical Bhavan Veer Savarkar Marg, Prabhadevi, Mumbai-25	बनाम/ Vs.	PCIT-8, R. No. 611, 6 th floor Aaykar Bhavan, M. K. Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AABCR-6483-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vimal Punmiya, Ld. AR
Revenue by	:	Shri R. M. Madhvi, Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	25/10/2021
घोषणा की तारीख / Date of Pronouncement	:	25/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 contest validity of revisional jurisdiction as exercised by Ld. Pr. Commissioner of Income Tax-8 (Pr. CIT) u/s 263 vide order dated 30/03/2021. The grounds read as under: -

1. The Ld. CIT erred in passing the order under section 263 of the I T Act, 1961 in spite of the fact that the assessment order was neither erroneous nor prejudicial to the interest of the revenue. The Ld. CIT erred in ignoring all the relevant facts and legal precedents cited by the appellant in support of its claim that in the facts and circumstances prevailing in the case of the appellant, no action under section 263,

was called for because the two view are possible and the Ld. AO had adopted the view in favour of assessee.

2. On the facts and circumstance of the case and law, the Ld, CIT erred in passing order u/s 263 and thereby disallowed the 100% genuine expenses of Rs.4,08,72,575/- claimed under section 37(1) of the I T Act 1961 for the Business purpose.

2. The Ld. AR submitted that business expenses were disallowed on an estimated basis while framing the assessment order and the matter is already sub-judice before learned first appellate authority. The Ld. AR submitted that since the subject matter of revision is already pending before first appellate authority, revision is bad in law. The Ld. AR also submitted that Ld. AO took one of the possible views and therefore, the revision was not valid. The Ld. CIT-DR, on the other hand, submitted that the assessee failed to submit any details during assessment proceedings and therefore, the expenses should have been disallowed in totality as observed in the revisional order. Having heard rival submissions, our adjudication would be as given in succeeding paragraphs.

3. The material facts are that an assessment was framed against the assessee on 18/11/2017. During assessment proceedings, the assessee failed to comply with various notices and did not file any details. Therefore, the assessment was completed on the basis of material on record. Upon perusal of Profit & Loss Account, it transpired that the assessee claimed various expenses of Rs.544.96 Lacs which were in the nature of employee benefit expenses, cost of material consumed, operating expenses, finance cost, depreciation and amortization etc. as detailed in para 5.2 of the assessment order. In the absence of supporting evidences, Ld. AO formed an opinion that the expenses were not verifiable. Accordingly, Ld. AO made adhoc disallowance of 25% of

expenses and determined the income of the assessee. During hearing before us, it has been submitted that aforesaid order has been challenged by the assessee and the same is pending for adjudication before learned first appellate authority.

4. In the meanwhile, Ld. Pr. CIT, upon perusal of case records, sought revision of the order and issued show-cause notice to the assessee. The same stem from the observation of Ld. Pr.CIT that the disallowance of 25% of expenses was without any reason and since the assessee did not file any details / documents, the expenses should have been disallowed in full.

5. In response, the assessee submitted ledger accounts, bank statements and party-wise details of expenses and assailed the revision of the order. However, finding that the assessee did not submit any invoices or confirmation of parties to whom the payments were made, the submissions were held to be inconclusive. Finally, observing that Ld. AO failed to make necessary enquiries / verification and still accepted 75% of the expenses to be genuine without any rationale, Ld. AO was directed to frame the assessment de novo. Aggrieved, the assessee is in further appeal before us.

6. Upon careful consideration of factual matrix, it could be observed that the assessment was practically framed on best judgment basis since the assessee failed to submit any details / documents during original assessment proceedings. The Ld. AO, going by the factual matrix and considering the nature of assessee's business, disallowed 25% of all expenses which includes cost of material consumed by the assessee during the year. It is evident that Ld. AO issued hearing notices to the assessee which were not complied with by the assessee. In such a

situation, Ld. AO had no option but to make the assessment to the best of his judgment. The Ld. AO, with due application of mind, chose to disallow 25% of the expenses. Therefore, the observations of Ld. Pr. CIT that the assessment was framed without making necessary enquiries / verification has no legs to stand since in fact, the assessment has been framed on a best judgment basis. The estimation as made by Ld. AO was one of the possible views and Ld. Pr. CIT, in our considered opinion, could not substitute the judgment of Ld. AO and direct him to disallow entire expenditure. The revisional authority, in our considered opinion, has no power to revise the order by disputing the quantum of disallowance once a conscious decision was taken by Ld. AO in the matter. Another fact that could be noted that the assessment order is already in further challenge before first appellate authority wherein that authority has ample power to revise the estimations as made by Ld. AO. Therefore, considering the facts of the case, the revisional order is not sustainable in the eyes of law. By quashing the same, we allow the appeal of the assessee.

7. The appeal stand allowed in terms of our above order.

Order pronounced on 25th October, 2021.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/10/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.