

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.7782/Mum/2019
(Assessment year : 2015-16)

M/s Ginni Gopal Board Private Ltd B-9, Synthofine Industrial Estate Opp. Aarey Road, Behind Virwani Industrial Estate, Mumbai-400 063 PAN : AAACG1608H (Appellant)	vs	ITO-12(2)(3), Mumbai (Respondent)
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Assessee represented by	:	Shri Vishwas Mehendale
Department represented by	:	Shri Anoop Hiwase
Date of hearing	:	10/02/2022
Date of pronouncement	:	22/02/2022

O R D E R

Per: Gagan Goyal (AM):

This is an appeal filed by the assessee against the order dated 30/09/2019 passed by the Commissioner of Income-tax (Appeals)-20, Mumbai for the assessment year 2015-16.

2. There grounds of appeal raised in the appeal read as below:-

"1. The learned assessing officer has erred in disallowing 15 percent of expenses incurred towards Business Promotion. Car expenses and Travelling expenses being personal element.

2. On the facts and in the circumstances of the case and in law, Hon. Commissioner of Income Tax (Appeals) has erred in confirming the Disallowance of Business Promotion Expenses of rs.90-,935/- being 15% of Total Rs.6,03,596/- and further erred in enhancing the same disallowance by Rs.5,13,057/-."

But, subsequently, on 01/11/2021, the assessee modified ground 2, which is as under:-

"2. On the facts and in the circumstances of the case and in law, Hon. Commissioner of Income Tax (Appeals) has erred in confirming the Disallowance of Business Promotion Expenses of Rs.90,539/- being 15% of Total Rs.6,03,596/- and further erred in enhancing the same disallowance by R.5,13,057/-."

3. The facts in brief are that the assessee, a company is engaged in carrying on the business of manufacturing and trading in paper and paper products, various boxes and boards. A return of income for the assessment year 2015-16 was filed on 30/09/2015 declaring total income of Rs.29,56,350/-; however, in an assessment made under section 143(3) of the Income-tax Act, 1961, the assessing officer determined the total income at Rs.33,154,960/- which interalia include disallowance of Rs.1,99,010/- and disallowance of Rs.1,59,600/- made out of rent expenses. The assessee contested the disallowances before the CIT(A). The Ld.CIT(A), however, enhanced the disallowance to the extent of entire business promotion expenses for the reason that there was inconsistency in reasoning for claiming the expenditure.

4. Aggrieved, the assessee is in appeal before us.

5. Before us, the Ld.AR of the assessee submitted that the Ld.CIT(A) was not justified in disallowing the entire business promotion expenses and thereby

enhancing the disallowance. The assessing officer has disallowed 15% of the expenses claimed as personal / non business expenditure, on estimate basis. However, the Ld.CIT(A), without having any corroborate materials in hand, has disallowed the entire expenditure claimed, that is Rs.6,03,596/-. He submitted that the assessing officer, on being satisfied that the assessee had in fact purchased gold idols for distribution amongst the staff during diwali festival, has disallowed a portion of expenditure as, as according to him, personal use could not be ruled out. But the Ld.CIT(A) disallowed the entire expenditure claimed under the head 'Business promotion expenses'.

6. The learned departmental representative, on the other hand, heavily relied upon the order of the Ld.CIT(A).

7. We have considered the rival submissions and perused materials available on record. We find that the assessee took a stand before the assessing officer that it had purchased gold idols for distribution amongst the customers / vendors during diwali festival. Assessee had submitted all the relevant informations, such as invoice of purchase, certificate of vendor and list of customers and vendors to whom gifts have been distributed. By doing so, the assessee had discharged its onus. The Ld.CIT(A) is well empowered to investigate further by asking for remand report from the assessing officer. Instead of doing so, he simply brushed aside the whole expense after giving enhancement notice under section 251(2) of the I.T. Act, 1961. Here we observe that the powers of the CIT(A) is co-terminus with that of the assessing officer. Therefore, we find the order of Ld.CIT(A) perverse in nature and liable to be set aside.

8. However, we find that the assessing officer has disallowed 15% of the expenses incurred under 'Business promotion expenses' for personal element or non business purpose. The position remains before us, as well. Therefore, we set aside the order of Ld.CIT(A) and restore that of the assessing officer.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22nd February, 2022.

Sd/-

sd/-

(VIKAS AWASTHY)

JUDICIAL MEMBER

Mumbai, Dt : 22nd February, 2022

Pavanan

Copy to :

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

(GAGAN GOYAL)

ACCOUNTANT MEMBER

/True copy/

Assistant Registrar / Senior Private Secretary
ITAT, Mumbai Benches