

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2218/Mum/2019

(A.Y: 2015-16)

M/s. Viking Beverages Pvt Ltd, 6 th Floor, JMJ House, Orchard avenue, Hairanandani, Powai, Mumbai – 400076	Vs.	ITO, Ward – 15(3)(2) Aayakar Bhavan, MK Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECB1368F		
Appellant	..	Respondent

Appellant by :	Shri. Rajiv Khandelwal, AR
Respondent by :	Shri. S.N. Kabra, DR

Date of Hearing	30.09.2021
Date of Pronouncement	16.12.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-24, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961.

The assessee has raised the following grounds of appeal:

1. *That the order of the Ld CIT(A) is defective both in law and facts of the case.*
2. *That the Ld. CIT(A) is unjustified in upholding the order of the AO on account of disallowance of sponsorship fee of Rs. 1,11,00,000/- being sponsorship fees paid to the Celebrity*

Cricket League on the ground that the appellants failed to prove that the said expenses are genuine and that they have been incurred wholly and exclusively for the purpose of business.

3. That the Ld. CIT(A) is unjustified in upholding the order of the Ld. AO on account of ignoring the fact that out of the total expenditure of Rs. 1,11,00,000, a sum of Rs. 75,00,000 is the expenditure incurred by the appellants on behalf of Viiking Confectionary Pvt Ltd that has been credited to the profit and loss account of the appellants and hence, the impugned disallowance ought to have been restricted to Rs. 36,00,000/- without prejudice to the above grounds.

4. That any other ground may kindly be allowed to be taken at the time of appeal with due permission.

2. The brief facts of the case are that, the assessee company is engaged in the business of manufacturing and supply of energy drinks. The assessee has filed the return of income for the A.Y 2015-16 on 30.09.2015 declaring a Total income (Loss) of Rs. 29,20,064/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and the notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance, the Ld. AR of the assessee appeared from time to time and furnished the details and the case was discussed. During the year, the assessee has disclosed income from revenue operations of Rs. 84,90,062/- and other income of Rs. 2,39,35,090/- and the net loss of Rs.

28,39,872/- . On perusal of the financial statements, the Assessing Officer (A.O.) found that the assessee has claimed an amount of Rs.1,12,54,053/- under the administrative and selling expenses debited to profit and loss account. The assessee was called to furnish the details of large sales promotion expenses with documentary evidences and reasons and the assessee has furnished the details vide letter dated 24.08.2017.

3. On perusal of the ledger account, the A.O found that out of the total expenditure an amount of Rs. 1,11,00,000/- is claimed on account of sponsorship fees and whereas Rs 52,500/- on account of product registration fees and Rs. 1,01,553/- as a sales promotional expenses. Since there were no details available, the A.O has called for the details of sponsorship fees paid and the exact nature of expenses. The assessee has submitted that the Sponsorship fees was incurred on account of payment to Celebrity Cricket League(CCL) Hyderabad towards the title sponsor for promoting the company products. The A.O. observed that though the information was filed but to verify the genuineness of the transactions has issued notice u/s 133(6) of the Act on the Celebrity Cricket League Hyderabad referred at Para 3.3 of the order and also the

reminder letters and there was no compliance to notice u/sec 133(6) of the Act.

4. Whereas the assessee has submitted the invoice copies but the A.O found that there are certain discrepancies in the payments. The A.O. has referred the cheques issued by the assessee to the CCL and observed that the assessee has not furnished the proper information and explanations to the transactions. The A.O. dealt on the various facts of the claims and finally observed that the expenses claimed as a business promotion on account of sponsorship fees paid to CCL Hyderabad is not incurred for the purpose of business and disallowed the expenses and assessed the total income of Rs.81,79,940/- and passed order u/s 143(3) of the Act dated 21.12.2017.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, the CIT(A) has dealt on the grounds of appeal, submissions of the assessee, scrutiny assessment findings and finally the CIT(A) came to a conclusion that the transactions cannot be acceptable. The assessee has not able to prove the sponsorship fee paid to the CCL Hyderabad is incurred wholly and exclusively for the purpose of business and confirmed the order of the A.O.

Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the addition made by the A.O. irrespective of the fact that the assessee has received credit in the profit and loss account for the said transaction from the sister concern and the genuineness cannot be doubted. The Ld.AR substantiated the submissions with the paper book specifying the nature of transactions, news articles, ledger account copies and sponsorships agreement and prayed for allowing the assessee appeal. Contra, the Ld. DR relied on the order of the lower authorities.

7. We heard the rival submissions and perused the material available on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the CIT(A) has erred in confirming the addition irrespective of the fact that the assessee could able substantiate in the Assessement proceedings that it was incurred wholly and exclusively for the purpose of business. The assessee is in the business of manufacturing of energy drinks and for the promotion of the energy drinks, the assessee has sponsorship the Celebrity Cricket League(CCL) Hyderabad

and paid the sponsorship fees. The Ld AR submitted that Rs 75,00,000 was credited to Profit and Loss account as it pertains to the share of expenditure incurred by the sister concern M/s Viking Confectionary Pvt Ltd therefore the net sponsorship fees paid is Rs 36,00,000/-. The Ld. AR also submitted that the amount was incurred wholly and exclusively for the purpose of the business and referred to the page 19 of the paper book, where the transactions with the related parties disclosed by the assessee in the audit report and further the details of transactions carried out with the related parties in the ordinary course of business. The Ld.AR submitted that the genuineness of the transactions cannot be doubted and referred to material of the news agencies reflecting the sponsorships.

8. The assessee is manufacturing of energy drinks and the sponsorship play a vital role in promoting the products. The Ld. AR referred to the letter issued by the CCL to the assessee acknowledging the payment of Rs. 1,11,00,000/-towards the CCL season five title sponsorship fees. The Ld.AR has substantiated the arguments by demonstrating the invoice copies at page 25 to 28 of the paper book. The contentions of the Ld.AR that the payments are utilized for the purpose of business

and are acceptable. The Ld. AR also referred to the bank statement at page 37 of the paper book reflecting the payments and the TDS. Further, the assessee has issued a letter on 30.1.2018 to the A.O to rectify the mistake apparent from record in respect of sponsorship fees, that an amount of Rs. 75,00,000/- was paid as a sponsorship fee on behalf of sister concern M/s Viking Confectionary Pvt Ltd and without prejudice, if any disallowance has to be restricted to the extent of Rs. 36,00,000/-.

9. We on perusal of the facts and submissions find that the assessee could not be able to substantiate with the evidences in respect of the transactions which cannot be overlooked. Further, the assessee has sponsored the cricket league considering the increase in the sales in future. The CIT(A) has observed at Para 5.3.10 of the order as under:

“5.3.10. Before concluding on this matter, the appellant in the statement of facts mentioned that an amount of Rs. 75,00,000/- was credited to profit and loss account as the same pertained to the expenditure incurred by the appellant on behalf of M/s. Viking Confectionery Pvt Ltd., and hence, the disallowance should be limited to Rs. 36,00,000 only. Having said this, the appellant has not substantiated this claim or pressed the same at the time of the appellant proceedings and hence, the same is not being considered while disposing the appeal.”

The contentions raised by the Ld.AR that out of Rs. Rs.1,11,00,000/- sponsorship fees, an amount of Rs. 75,00,000/- sponsorship fee pertains to the sister concern has been received by the assessee and the CIT(A) has over looked the submissions. We considering the overall facts, submissions and the area of working of the assessee are of the opinion that the expenditure is incurred by the assessee for promotion of their brand in future and in the cricket league events, where the products of the assessee are used. Hence the expenditure is incurred wholly and exclusively for the purpose of business which cannot be doubted. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 16.12.2021.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.12.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai