

आयकर अपीलीय अधिकरण

मुंबई पीठ " जी "

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "G", MUMBAI

BEFORE SH. VIKAS AWASTHY, JUDICIAL MEMBER &

SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER

आअसं. 3070/मुं/2019 (नि. व. 2013-14)

ITA NO.3070/MUM/2019 (A.Y.2013-14)

आअसं. 3071/मुं/2019 (नि. व. 2014-15)

ITA NO.3071/MUM/2019 (A.Y.2014-15)

M/s. Sonic Biochem Extractions Ltd.,
7A Vimal Udyog Bhavan, Shivaji Park,
Matunga West, Mumbai 400 016

PAN: AABCS-5326-B

..... अपीलार्थी /Appellant

बनाम Vs.

The DCIT-8(2)(2),
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Hitesh Chimnani

प्रतिवादी द्वारा/Respondent by : Shri Hosang B. Irani

सुनवाई की तिथि/ Date of hearing : 09/06/2022

घोषणा की तिथि/ Date of pronouncement : 21/06/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-14, Mumbai [in short 'the CIT(A)'] for the assessment years 2013-14 and 2014-15, respectively. Both the impugned orders are of even date i.e.27/02/2019. Since, identical issue is involved in both these appeals, these appeals are taken up together for adjudication and are disposed of by this consolidated order.

2. The appeal in ITA No.3070/Mum/2019 for assessment year 2013-14 is taken as the lead case, therefore, the facts are narrated from the same.

ITA No.3070/Mum/2019 - AY 2013-14

3. Shri Hitesh Chimnani appearing on behalf of the assessee submitted that the assessee is a Public Limited Company engaged in manufacturing, marketing and export of Soya Flour, Chunks, Lecithin and other Soya products. The assessee filed its return of income for assessment year 2013-14 declaring total income of Rs.(-)1,44,87,603/-. Subsequently, the assessee revised its return of income declaring total income of Rs (-) 1,35,30,817/-. The assessee paid taxes on Book Profits Rs.5,77,81,192/- under section 115JB of the Income Tax Act, 1961 (in short 'the Act'). In scrutiny assessment proceedings the Assessing Officer inter-alia made adhoc disallowance/addition of certain business related expenditure. The assessee carried the issue in appeal before CIT(A). The CIT(A) deleted adhoc disallowance in respect of 'Loss of Goods in Transit' and 'Quality Rebate' and confirmed adhoc disallowance in respect of following items:

S.No.	Particulars of addition	Amount debited in P&L	Addition made	Reasons cited for addition
1.	Telephone Expenses	Rs.23,45,983/-	Rs. 1,00,000/-	Personal use by the directors
2.	Vehicle running and maintenance expense	Rs.38,07,375/-	Rs.1,25,000/-	Personal use by the directors.
3.	License fee and renewal expenses	Rs.20,13,661/-	Rs.2,00,000/-	Details not found.
4.	Foreign travelling expenses	Rs.48,99,010/-	Rs.2,44,950/-	Personal use cannot be ruled out.
5.	Garden Maintenance Expenses	Rs.88,590/-	Rs.88,590/-	Not related to the business of the assessee.
6.	Consumption of stores and spares	Rs.1,56,83,459/-	Rs.7,84,173/-	Capital Expenditure.
7.	Sales Promotion	Rs.18,46,043/-	Rs.92,302/-	Some details missing.

The Id. Authorized Representative of the assessee submitted that in preceding assessment years as well i.e. assessment years 2005-06 to 2007-08 adhoc disallowance of business expenditure was made by the Assessing Officer. The issue travelled upto the Tribunal. The Tribunal in assessee's appeal in ITA No.8136 to 8138/Mum/2011 vide order dated 20/03/2013 allowed the claim of assessee in full. The fact that the issue is also covered in favour of assessee by the decision of Tribunal in assessee's own case for assessment year 2010-11 has been admitted by the CIT(A) in the impugned order, however, despite that the CIT(A) upheld adhoc addition made by the Assessing Officer. The Id. Authorized Representative of the assessee furnished copy of Tribunal order in assessee's own case in ITA No.8136 to 8138/Mum/2011 (supra)

4. Per contra, Shri Hosang B. Irani representing the Department vehemently defended the order of CIT(A). The Id. Departmental Representative submitted that several additions were made by the Assessing Officer for want of supporting documents. Wherever the assessee was able to substantiate genuineness of expenditure, the CIT(A) has granted relief. He further pointed that additions were confirmed by the CIT(A) as Authorized Representative of the assessee had agreed for these additions during assessment proceedings.

5. Rebutting the arguments made on behalf of the Revenue the Id. Authorized Representative of the assessee submitted that the assessee never admitted before the Assessing Officer for adhoc disallowances of the expenditure. This fact has been wrongly recorded in the assessment order. The Id. Authorized Representative of the assessee further pointed that the assessee had no reason/logic to admit these additions when the assessee got relief from the Tribunal in respect of identical additions made in the preceding assessment years vide order dated 20/03/2013. The assessment order was passed on 30/03/2016 i.e. much after the order of Tribunal.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. The solitary issue raised in appeal before us is with respect to adhoc disallowance of various expenditure stated to be incurred solely and exclusively for the purpose of business. We find that in preceding assessment years as well the Assessing Officer has been making adhoc disallowance of various expenditure incurred by assessee exclusively for the purpose of business. The matter travelled upto the Tribunal . The Co-ordinate Bench of the Tribunal in ITA No. 8136 to 8138/Mum/2011(supra) deleted adhoc disallowance of expenditure made by Assessing Officer by observing as under:-

“7. After considering the rival submissions, we are of the opinion that there is no need for any disallowance of expenditure in repairs and maintenance or vehicle maintenance on ad hoc basis. If the Assessing Officer is not satisfied either about the maintenance of vouchers or verifiable nature of the vouchers, he should identify them and disallow the entire amount under section 37(1), rather than resorting to ad hoc disallowance. The reasons for disallowing are very general in nature without any specific mistakes being pointed out by the Assessing Officer. Considering that the assessee is an agro-based chemical company and also a public limited company, we do not consider it necessary for disallowing expenditure on ad hoc basis. Accordingly, the same are allowed fully by deleting the ad hoc disallowances. The grounds are allowed.”

In the impugned assessment year we find that the reason for disallowance is almost the same. It is an undisputed fact that the books of assessee are subject to audit and the assessee being a company there can be no element of personal expenditure. As the table furnished in para – 3 above shows that the disallowance of various expenditure have been made for the reasons that either the expenditure is for personal use of the directors or the assessee has failed to furnish details or the nature of expenditure is stated to be capital. In so far as the allegation that the expenditure is for the personal use of the directors the same is merely Assessing Officer’s presumption and suspicion. For instance while disallowing foreign travel expenses the Assessing Officer has observed that there has been disproportionate increase in foreign travel expenditure to exports, therefore, personal travel element

cannot be ruled out and, thereafter, the Assessing Officer made adhoc disallowance of 5% of the foreign travel expenses. Without there being any cogent evidence to show that there is element of personal expenses, no disallowance could have been made. In respect of consumption of stores and spares the Assessing Officer observed that the expenditure is capital in nature and made 5% disallowance of the expenditure merely on assumptions. If the expenditure is on capital account, the Assessing Officer should have examined the same in detail and giving definite finding should have made disallowance to the extent expenditure is capital in nature. The Assessing Officer has given finding in respect of sales promotion expenditure, that some details are missing. Without specifying the missing details the Assessing Officer had made adhoc disallowance of sales promotion expenditure. The disallowance made in a casual manner without pointing shortcomings in the details furnished by the assessee is unsustainable, hence, deleted.

7. The Assessing Officer disallowed expenditure of Rs.2.00 lacs in respect of licence fee/renewal expenses. The assessee furnished before us the details of the licence fee/renewal at page 73 to 77 of the paper book. The details were also purportedly submitted before the Assessing Officer and the CIT(A). The Authorised Representative of the assessee has issued certificate to this effect. The Revenue has not raised any objection to the said certificate.

8. In light of the facts of case and the decision of the Co-ordinate Bench in assessee's own case in preceding assessment years, the additions/disallowances made in impugned assessment year are directed to be deleted. Hence, the appeal stands allowed.

ITA NO.3071/MUM/2019 - AY 2014-15:

9. The Id. Authorized Representative of the assessee submitted that the only expenditure that is subject matter of dispute in assessment year 2014-15 is

disallowance of licence fee Rs.2.00 lacs. The Id. Authorized Representative of the assessee submitted that the submissions made for assessment year 2013-14 would equally apply to assessment year 2014-15.

10. The Id. Departmental Representative fairly admitted that the disallowance in the impugned assessment year is similar to the one made in assessment year 2013-14.

11. Both sides are unanimous in stating that the manner and item of disallowance in the impugned assessment year is identical to the claim in 2013-14. Therefore, findings given for assessment year 2013-14 would *mutatis mutandis* apply to the impugned assessment year as well for parity of reasons. The solitary issue raised in the appeal by assessee is allowed.

12. In the result, appeal by assessee for assessment year 2013-14 and 2014-15 are allowed.

Order pronounced in the open court on Tuesday the 21st day of June, 2022.

Sd/-

(PRASHANT MAHARISHI)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated : 21/06/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai