

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 397/Rjt/2017
Assessment Year 2014-15**

M/s. Mokshstar International, Plot No. 337-338, Sec. No. 1, KSEZ, Gandhidham PAN: AAQFM1764P (Appellant)	Vs	The ACIT, Gandhidham, (Respondent)
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**Assessee by: Adjourment Application
Revenue by: Shri Sanjeev Jain, CIT-D.R.**

Date of hearing : 29-06-2022
Date of pronouncement : 27-07-2022

आदेश/ORDER

PER BENCH:-

This assessee's appeal for A.Y. 2014-15, arises from order of the Commissioner of Income Tax (Appeals)-2, Rajkot dated 21-08-2017, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised the following grounds of appeal:-

“1. The learned Commissioner of Income Tax (Appeals) officer erred in upholding the disallowance at Rs. 2, 00,000/-.

2. The learned CIT (Appeals) has decided identical matter in favour of the assessee on identical facts in their case in earlier years (A.Y. 2011-12, 2012- 13) and therefore should not have upheld the disallowance.

3. The appellant craves the leave to add, amend, alter, vary and / or delete, withdraw any or all of the grounds of appeal at or before the time of hearing.”

3. The brief facts of the case are that the assessee is a firm engaged in the business of import of plastic scrap from European countries, USA and countries situated in UAE. During the course of assessment, the AO noticed that the assessee had debited following expenses, which have elements of personal and non-business nature:

Conveyance charges	1,05,563/-
Fuel exp. motor car	1,61,038/-
Repairs & maint. (motorcar)	88,926/-
Telephone charges	1,40,292/-
Travelling expense	3,84,615/-

3.1 The AO noticed that the assessee has not maintained log-book or any other document to separate business and non-business expenses. Therefore, it is not established that expenses were wholly and exclusively incurred for

the business purposes. Further, the AO noted that many expenses were accounted on the basis of self-made vouchers. In some of the supporting evidences, addresses are of the recipient were missing and vouchers were lacking proper details about the expenditure made. Therefore, the AO disallowed a lump sum amount of ₹ 2 lakhs out of the above expenditure by treating it to be incurred for non-business use and added the same back to the total income of the assessee. In appeal, Ld. CIT(Appeals) dismissed the assessee's appeal with the following observations:

“6. Decision

Having considered facts and circumstances of the case and rival contentions I find that the appellant's Id. Counsel during appellate proceedings has not denied that log book of vehicles and telephones has not been maintained and that few of the vouchers of expenses are self made and not subject to verification. In these facts, the case can be distinguished from that relied upon by assessee for earlier years. The observation of AO at beginning of assessment order that books pf A/c and details were furnished is a general finding whereas in the concluding paragraph there is a specific finding that log books were not maintained and that some vouchers were not subject to verification being self made and lacking complete and proper address. In these facts, I do not find any infirmity in adhoc disallowance made by AO which is neither unjustified nor exorbitant nor unreasonable in quantum.”

4. The assessee is in appeal before us against the aforesaid addition of ₹ 2 lakh made during the assessment proceedings. The counsel for the assessee submitted that the disallowance has been made on a purely ad-hoc basis, without finding any fault in the audited books submitted before the AO

during the course of assessment proceedings. Accordingly, the AO has erred in law and on facts in making disallowance of ₹ 2 lakhs on a purely ad-hoc basis, which is impermissible law. In response, the Ld. DR relied on the observations made by the Ld. CIT(Appeals) in the appeal order.

5. We have heard the rival contentions and perused the material on record. We observe that the AO has not disputed that the accounts and records the assessee are audited under the provisions of section 44AB of the Act. The AO has not rejected the books of the assessee. In the case of **Katira Construction Ltd. v. ACIT [2020] 119 taxmann.com 489 (Rajkot - Trib.)**, ITAT held that where books of account of assessee have not been rejected, onus is on Assessing Officer to point out specific expenses which were not incurred in connection with business and thereafter he can make disallowance under provisions of section 37 and as such there is no provision provided under Act empowering Assessing Officer to make disallowance on ad-hoc basis despite fact that assessee consents for such disallowance during assessment proceedings. In the case of **M.V.A. Seetharama Raju v. DCIT [2022] 137 taxmann.com 147 (Chennai - Trib.)**, the ITAT held that in respect of foreign travelling expenses unless Assessing Officer points out specific defects in expenditure claimed by assessee, no ad-hoc disallowance can be made for reason that assessee has not filed any evidence to justify said expenses. In the case of **Kailas Chand Agrawal [2022] 139 taxmann.com 462(Raipur-Trib.)**, AO disallowed portion of expenditure applying ad-hoc percentile on ground that some of expenditures were in cash and were supported only by self-made vouchers. It was noted that there had been no clear finding as to number of

vouchers requiring denial of allowances with amount of expenditure and nature of defects therein or therewith. The ITAT held that since it was not case of revenue that any part of expenditure in question was either bogus or fictitious or same was not incurred by assessee wholly and exclusively for purpose of his business, ad-hoc disallowance in its entirety deserved to be vacated. In the case of **Seal For Life India (P.) Ltd. v. DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.)**, ITAT held that ad-hoc disallowance could not be made from total travel and conveyance expenses incurred by assessee company on ground that expenses were in respect of use of vehicles by directors of assessee company was personal in nature. In the case of **Kushal Virendra Tandon v. ACIT [2022] 134 taxmann.com 268 (Mumbai - Trib.)**, the ITAT held that in absence of specific finding by lower authorities regarding documentary evidence which pointed out that expenditure were not incurred wholly and exclusively for purpose of business or profession, disallowance of expenses in arbitrary manner on an ad-hoc basis has to be set aside. In the case of **ACIT v. Vanesa Cosmetics Adhoc [2021] 127 taxmann.com 499 (Delhi - Trib.)** additions made by Assessing Officer on account of interest expenses on car having element of personal use, tour and travelling expenses and conveyance expenses respectively, without assigning any reason would not be sustainable in eyes of law. In view of the consistent position taken by various Tribunals on the issue of disallowability of expenses on purely ad-hoc basis, without the AO having rejected books of accounts, including the jurisdictional Rajkot ITAT, we are hereby allowing the assessee's appeal in respect of the ad-hoc disallowance.

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

Order pronounced in the open court on 27-07-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 27/07/2022

Sd/-
(SIDHHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot