

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.82/PUN/2018

निर्धारण वर्ष / Assessment Year : 2011-12

DCIT, Circle 1(2), Pune	Vs.	Green Crop International Pvt. Ltd., 205, 2 nd Floor, Vasudha Equinox, Pune Mumbai Old Highway, Near Khadki Railway Station, Bopodi, Pune – 411003 PAN: AADCG4391A
Appellant		Respondent

Assessee by Shri Abhay Avchat
Revenue by Shri M.G. Jasanani

Date of hearing 14-07-2022
Date of pronouncement 27-07-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This Revenue's appeal for AY 2011-12 arises against the CIT(A), Pune-1, Pune's order dated 27-10-2017 passed in case No. ITBA/APL/S/250/2017-18/1007448316(1), in proceedings under Section 147 of the Income Tax Act, 1961, in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal:

“1. The order of the Ld. Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.

2. The Ld. Commissioner of Income-tax (Appeals) grossly erred in deleting the addition made by the Assessing Officer of Rs.1,39,55,205/- ignoring the facts discussed in assessment order.

3. The Ld CIT(A) grossly erred in deleting the addition made by the AO of Rs. 1,39,55,205/- and Rs.23,79,688/- ignoring the facts that assessee failed to avail sufficient opportunity granted to it on 10.02.2014, 17.03.2014 & 25.03.2014 and failed to substantiate the claim of expenses for which onus lies on assesses.

4. The Ld CIT(A) erred in allowing the ground in favour of assessee ignoring the comments filed by AO on additional evidences during appellate proceedings and not using the powers vested in him by passing order u/s 250(4) of the Act.

3. Mr. Jasanani first of all reiterated the Revenue’s above stated fourth substantive ground that the CIT(A) has erred in law and on facts in admitting assessee’s additional evidence without considering the Assessing Officer’s comments thereupon. These technical arguments are found to be without any substance since the CIT(A)’s findings in para 7 onwards had duly directed the Assessing Officer to carry out his necessary factual verification(s) wherein no adverse comments came to be filed from the latter’s end. The Assessing Officer in fact appears to have duly filed his remand report dated 18.07.2017 (para 8) in the CIT(A)’s order. The Revenue fails in its fourth substantive ground therefore.

4. Next come the twin issues on merits regarding disallowance of assessee's direct and indirect expenditure amounting to Rs.1,39,55,205/- and Rs.23,79,688/-; respectively. The CIT(A) has dealt with the same as follows:

"10. I have carefully considered the facts of the case as well as reply of the appellant. In this case, it is seen that the appellant was asked to file certain details during the course of hearing on 25.03.2014, which was required to be filed by 27.03.2014. Since the same could not be filed by 27.03.2014, a letter was issued to the appellant that the matter will be decided on the basis of facts available on record. The assessment was ultimately completed on 30.03.2014 resulting into above additions. The opportunity of two days given by the A.O. cannot be considered to be sufficient opportunity by any standards and therefore, additional evidence filed by the appellant is admitted notwithstanding opposition of the A.O. which lacks merit. Further, the A.O. has not filed his comments in respect of merit of the addition. This being so, it is concluded that the A.O. has nothing to comment on merit and accordingly, the issue is decided on the basis of facts available on record.

11. It is seen that the appellant has filed following submissions on merit:-

"Explanation/Submissions on disallowances/Additions:

- 1. In the following paras, justification to why expenses appear relatively on a higher side is provided.*
- 2. It is respectfully submitted that an expense cannot be disallowed on the ground of being unreasonable if is bona fide, except in a case where s.40A(2)(a) applies which specifically talks of expenses incurred, in favour of "Relatives" should be "reasonable". Thus, expenses in other cases cannot be disallowed on the ground of being "unreasonable" where the unreasonableness is the perception of the AO. It has been held in a number of cases that the AO cannot sit in judgment and decide what "should be"; he has to consider "what is". The AO has to consider the facts as they are; he cannot insist on what the facts should be.*

3. *Without prejudice to the above, the enclosed Note with enclosures explains the query of the AO.*

2. *With regard to increase in Direct Expenses:*

During the year 2010-11 there is an increase in Direct Expenses compared to 2009-10 mainly because of the different product mix. When we classify our products based on their gross margins, it is noticed that the increase in Sales of Rs.470.43 lacs is mainly in the groups whose gross margin is very low. Moreover, during the year the Company has maintained very competitive sales prices to increase the turnover value and to sustain the heavy competition in the market. This has resulted in increase in Sales value but there is a dip in the gross margins compared to financial year 2009-10.

- Product wise and group wise Sales details along with average sales prices details enclosed.

Further, the Company during the year witnessed moderate-to-good Khariff season in all the territories excepting in our major contributing Akola Sales office territory and sluggish Rabi season thereby restricting the growth to a certain extent. Akola Sales office, the normally high performing sales office has unfortunately degrown by 11.8% due to adverse agro-climatic conditions prevailed during Khariff.

When we analyze the Gross Profit of the Company from 2006-07 to 2014-15, we notice only during the financial year 2009-10 the Company has made very good gross profit due to overall growth in the industry as a whole and the same cannot be treated as standard for other operating periods.

3. *With regard to increase in Freight & Forwarding expenses:*

The Freight & Forwarding expenses are not related to the value of Sales but it is based on the volume / weight of the goods transported and the distance to be covered.

There is increase in volume / weight in respect of Sales during the year which has resulted in increase in Freight & Forwarding expenses. – Product wise, Sales Qty details enclosed.

Our Sales Offices / Depots are located in various-States. The turnover is not constant at all these locations. The freight

charges vary based on the distance of these sales offices from the manufacturing locations. More over the increase in transportation charges due to Diesel price hike is also resulted in increase in Freight expenses.

4 With regard to increase in Rent, Rates & Taxes:

The reconciliation statement for F.Y. 2010-11 Vs 2009-10 enclosed."

12. I have carefully considered the facts of the case as well as reply of the appellant. As far as disallowance out of direct expenses amounting to Rs.1,39,55,205/- is concerned, it is seen that during the year, sales increased by Rs.4,70,58,017/- (from Rs.25,01,12,301/- in F.Y. 2009-10 to Rs.29,71,70,340/- in F.Y. 2010-11) while direct expenses increased by Rs.4,85,56,771/- (from Rs.18,39,06,542/- to Rs.23,24,63,313/-). In absence of any reasonable explanation, the A.O. worked out the disallowance on the basis of expenses claimed in F.Y. 2009-10, which was worked out at Rs.1,39,55,205/-. It is true that the direct expenses have increased compared to increase in the sales shown by the appellant. However, it is also true that the A.O. has not been able to find any defect in the books of account warranting any interference. The appellant in its reply has submitted a chart (Page 97 of the paper book), which shows that there has been a reduction in average sale price of most of the items compared to earlier year. This being so, the appellant has been able to explain its position to the objection of the A.O. with facts and figures. In any case, without pointing out any defect in the books of account, such disallowance made by the A.O. cannot be justified. Accordingly, he is directed to delete the disallowance of Rs.1,39,55,205/- made by him. For the similar reasons, the A.O. is also directed to delete the addition of Rs.23,79,688/- on account of indirect expenses."

5. Mr. Jasanani at this stage invited our attention to the assessment findings not only quoting the assessee's failure in filing the necessary supportive evidence but also the corresponding expenses claim to be proportionately higher as compared to preceding assessment years. There is hardly any dispute that the

assessee had filed all the relevant details before the CIT(A) running into 308 pages by way of additional evidence which have been nowhere controverted in the Assessing Officer's remand report at all (supra). We next note that the learned assessing authority has also not examined each and every head of expenditure but simply chose to disallow the same on proportionate basis without even touching the issue of genuineness thereof. Faced with this factual position, we conclude that the CIT(A) has rightly granted the impugned relief to the assessee on merits. His findings under challenge stand upheld therefore.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on 27th July, 2022.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER
पुणे Pune; दिनांक Dated : 27th July, 2022

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), Pune-1, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	14-07-2022	Sr.PS
2.	Draft placed before author	26-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		