

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-2” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMEBR
&
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 773/Ahd/2019
(निर्धारण वर्ष / Assessment Year : 2014-15)

Parshottam Sales Agency Shop No. 89, New Grain Mkt, Opp. Anupam Cinema, Khokhra, Maninagar, Ahmedabad - 380019	बनाम/ Vs.	The ITO Ward – 7(2)(4), 406, Nature View Building, Ahmedabad - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFP0577B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Divatia, AR
प्रत्यर्थी की ओर से/Respondent by :	Leena Lal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	01/07/2022
घोषणा की तारीख /Date of Pronouncement	07/09/2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.02.2019 passed by the learned Commissioner of Income Tax (Appeals) – 7, Ahmedabad arising out of the order dated 19.12.20168 passed by the Assessing Officer, Ward 7(2)(4), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2014-15.

2. The assessee has challenged the disallowance out of sales promotion expenses to the tune of Rs.24,56,798/- made by the learned CIT(A).

3. The assessee, a wholesaler of provision items, filed its return of income for the relevant assessment year 25.11.2014 declaring total income of Rs.5,53,530/-. The assessee firm has debited a sum of Rs.49,13,596/- towards sales promotion, which was claimed to have been incurred in cash. A list of 58 persons who were said to be received of various amounts from the assessee firm on account of sales promotion was duly furnished by the assessee wherefrom it was found lowest amount being Rs.16,740/- and the highest amount being Rs.1,56,538/- to one Shri Ajay Tiwari and Shri Arvind Pandey; respectively. Notices under S.133(6) of the Act were issued to eleven persons by the AO during the assessment proceedings at random, eight wherein were received back undelivered with the postal authorities remarks 'not known' or 'incomplete addresses' and in rest of the instances, it was observed that they were employed with the appellant and claimed to have received wages. It is relevant to note that there was a certain increase in sales promotion expense even though the turnover in current year has reduced and there was a claim of salary of Rs.12,17,828/- apart from sales promotion. Though the assessee was served with the show cause proposing to restrict the claim of expense at 50% of it since no compliance was made, the AO made addition of Rs.24,56,798/-, which was, in turn, confirmed by the learned CIT(A). Hence, the instant appeal before us.

4. Heard the parties and perused the relevant materials available on record.

5. It is the case of the assessee before the authorities below that the assessee regularly goes to the market, takes the orders in respect of forty shops and makes billing with the operator, though, the said fact is not forthcoming from the

affidavit given by six employees during the assessment proceedings. We further find that before the learned CIT(A), the assessee has not provided the list of shops visited by his employees, corresponding sales generated from those shops etc. to prove that these persons actually work as salesman. The evidences like sales, order books, delivery challans were in name of the persons to whom such payments were made is neither provided. Since, it appears that the corroborative evidences in regard to the claim of the appellant that the entire sales promotion expenditure is for the purpose of its business ultimately not filed before the learned CIT(A); the claim has not been proved in favour of the assessee. The learned CIT(A) ultimately confirmed the order passed by the learned AO with the following observations:

“5.3 So far as merits of the case are concerned it is observed that Appellant itself has given list of persons to whom above referred sales promotion payments have been made. The AO has randomly issued notices under Section 133(6) of the Act, out of which eight notices were received back as undelivered. In Appellate Proceedings Appellant has submitted affidavit of six ex-employees wherein they have stated that they were working as employees of such company in relevant Assessment Year and received remuneration from Appellant. It is pertinent to note that the AO in Assessment Order has observed that when Appellant is debiting salary expenses separately, then why remuneration paid to salesmen is debited under the head "sales promotion expenses" and this argument of AO is not rebutted by Appellant. It is also observed that Appellant has also submitted the nature of work carried out by above parties wherein it is mainly stated that orders in respect of 40 shops and make billing with the operator. It is found that this fact is never been stated by above six employees in their affidavit. The Appellant has not provided the list of shops visited by them, corresponding sales generated from such shops, etc., to prove that above persons have actually worked as salesmen. The Appellant has also not submitted any evidences like sales bill, order book, delivery, challans, etc., wherein names of the person to whom such payment is made. In absence of such corroborative evidences, claim of Appellant that entire sales promotion expenditure is for the purpose of its business cannot be accepted, that too merely on the basis of affidavit of six persons filed on 4th October, 2017. The Appellant has also filed fresh affidavits of such persons further elaborating their activities. However, their affidavits do not prove the genuineness of entire expenses claimed by Appellant, the Appellant, has submitted merely cash vouchers in support of its claim which do not justify business expediency more particularly such vouchers do not contain exhaustive details of sales promotion expenditure, It is also observed that Appellant is in the same business from last seven to eight years and during the year under consideration, there is reduction of turnover from Rs.51.57 crores to Rs.46.07 crores whereas sales promotion expenditure is increased from Rs.11.80 lacs to 49.13 lacs. When there is a significant increase in expenditure and majority of expenditure is incurred in cash and Appellant has not provided cogent reason for increase in such expenditure, AO was

justified in making disallowance of 50% of above expenditure. This view is also supported by decision of Hon'ble Delhi High Court in the case of SandipMarwah 101 taxmann.com 123 [2019] wherein it is held as under:

"IT: Where assessee claimed deduction in respect of business promotion expenses, in view of fact that assessee did not produce material and documents to show that said expenditure was incurred for business purpose, mere fact that payments were made through credit card would not be sufficient to prove their genuineness and, thus revenue authorities were justified in making disallowance of 50 per cent of expenses claimed as deduction"

Section 37(1) of the Income-tax Act, 1961 – Business expenditure -Allowability of (Business promotion expenses) - Assessment years 2007-08 and 2008-09 - During relevant year, assessee claimed deduction in respect of business promotion expenses - Assessing Officer finding that no bill or voucher was produced in support of incurring of said expenses, disallowed 50 per cent of same -Tribunal confirmed disallowance made by Assessing Officer -Whether in view of fact that assessee did not produce material and documents to show that expenditure claimed as deduction was incurred for business purpose, mere fact that payments were made through credit card would not prove genuineness of said expenditure - Held, yes - Whether, therefore, impugned disallowance made by authorities below was to be confirmed -Held, yes [Para 7] [In favour of revenue]"

The Hon'ble Allahabad High Court in the case of PCIT V/s Rimghimlspat Limited 81 taxman.com 86 has observed that when manufacturing expenses claimed by Appellant is not supported by bills, ad hoc disallowance is justified. The Hon'ble Rajasthan High Court in the case of Rajasthan Patrika Pvt. Limited V/s Jt. CIT 38 taxmann.com 240 [2013] has held as under:

"After having gone through the entire material placed on record, we are of the considered view that no substantial question of law arises in this case. The facts have been discussed by the competent authority as also by the appellate authority. Even the Tribunal has gone into the factual matrix and reasons for disallowing the expenses have been elaborately discussed holding that there was no business nexus of each and every expense debited in sales promotion head, because on one hand company was returning heavy losses and on the other hand it was claiming heavy expenses under various heads like travelling, printing, advertising etc. separately.

6. In view of the fact that the documentary evidence put forth by the assessee has been evaluated by the competent authority and affirmed by the appellate authority as also by the Tribunal and there being no substantial question of law in this case, we are of the view that the appeal deserves to be dismissed and is hereby dismissed, in limine."

5.4 In view of the above decisions and considering the facts of the case, the disallowance made by the AO is confirmed. **The related ground of appeal is dismissed."**

6. The assessee's case is not supported by the bills even before the learned CIT(A). Hence, at this juncture, we find it fit and proper to give a further

opportunity of being heard to the assessee to represent his case before the authorities below with supporting evidence. Hence, we dispose of this appeal by setting aside the issue to the file of the learned AO to dispose of the same afresh upon passing a reasoned order and upon affording an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter.

7. In the result, assessee's appeal is, thus, allowed for statistical purposes.

This Order pronounced in Open Court on 07/09/2020

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMEBR
Ahmedabad; Dated 07/09/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

S. K. SINHA

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad