

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

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
&
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 510/Ahd/2020
(निर्धारण वर्ष / Assessment Year : 2016-17)

Shri Birenbhai Deepakbhai Parikh 2 nd Floor, Navdeep House, Opp. Akashvani, Ashram Road, Ahmedabad - 380014	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Ward – 3(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACNPP1541Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Karan Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Abhimanyu Singh Yadav, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	10/06/2022
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 11.09.2020 passed by the learned Commissioner of Income Tax (Appeals) – 9, Ahmedabad arising out of the order dated 28.11.2018 passed by the Assessing Officer, Circle 3(1)(1), Ahmedabad under section 143(3) of the

Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2016-17, whereby and whereunder the claim of business loss of Riddhi Siddhi Trade Link to the tune of Rs.1,37,394/- and business expenditure of De-Param Healthcare to the tune of Rs.4,56,788/- has been disallowed.

2. Heard the parties, perused the relevant materials available on record.

3. The assessee engaged in the business of trading in clothes under the name and style of M/s. Riddhi Siddhi Tradelink and also in the business of manufacturing and trading of drugs and medicines under the name and style of M/s. De-Param healthcare filed its return of income declaring total income of Rs.26,91,310/- on 15.10.2016. The case was selected for scrutiny and relevant notices under S.143(2) of the Act dated 11.07.2017, followed by notice under S.142(1) of the Act dated 06.08.2018 was issued to the appellant, followed by a fresh notice under S.142(1) of the Act dated 03.11.2018 due to change of incumbent was served upon the assessee. During the assessment proceedings, the assessee showed loss of Rs.1,37,394/- from Riddhi Siddhi Tradelink and loss of Rs.3,48,036/- from De-Param Healthcare. In support of loss, the assessee contended that there was no sale or purchase of any products in the business of M/s. Riddhi Siddhi Tradelink though various direct expenses incidental to the business was incurred. In fact, the loss of Rs.1,37,394/- is mainly related to the rent expenses for Godown of Rs.1,32,000/-. Since, the assessee accepted the fact of no business activity carried out during the concerned year 2015-16, the genuineness of the payment was not found related to the business by the AO and the claim of Rs.1,37,394/- was disallowed.

4. The case of the assessee before the authorities below as well as before us is this that during financial year no sale or purchase could take place owing to the worst market condition at a lull/temporary discontinuance in the business. However, the appellant claimed to have incurred bank charges of Rs.3,394/-, professional tax of Rs.2000/- and rent of Rs.1,32,000/- and had shown in the P&L Account, which is also available before us at page No.53 of the paper book filed before us. The balance sheet reflected opening and closing stock of Rs.22,500/- for the year under consideration. The authorities below came to a finding that since there was only a lull/inactivity in the business and no permanent cessation of business, the claim made by the assessee cannot be allowed. We have taken note of the fact that the assessee thereafter assumed the business activity in the very next year subsequent to the year under consideration and reported revenue of Rs.44,30,266/- and Rs.25,41,909/- in the year 1016-17 & 2017-18; respectively. The copy of the bank statement, the rent agreement entered into by the assessee and the owner of the godown has duly taken care of by us, which were also made available before authorities below by the assessee. It, therefore, appears from the records that though the business of the assessee was not close down, the expenditure in the relevant years was reduced, since, there was a lull in the business, it was a case of dormancy of business activity rather than closure of business. Further that the assessee has been able to establish that there was nexus between the expenditure and the purpose of the business. Therefore, Revenue cannot justifiably claimed to put itself in the armchair of the business and disallow the claim made by the assessee. Since, expenses were wholly and exclusively for the purposes of business, the same deserves to be allowed and therefore the disallowance on account of business loss of Riddhi Siddhi

Trade Link to Rs.1,37,394/- is liable to be quashed. The addition is therefore deleted.

5. So far as the disallowance on account of business expenditure of De-Param Healthcare of Rs.2,28,394/- out of the total disallowance of Rs.4,56,788/- confirmed by the learned CIT(A) is concerned, we find that the assessee has sold goods of Rs.57,29,092/- and the goods returned is Rs.50,12,201/- because of products remained unsold in the hands of distributors. It is relevant to mention that the assessee is dealing in sales of various medical products to its distributor and if any product remains unsold in the hand of distributor, distributor returns the unsold product to the assessee. Apart from that we find that assessee has incurred various fixed direct and indirect expenses including administrative expenses, which were also found to be incurred at higher amount. The learned AO disallowed the 3/4th of such expenses, which was worked out Rs.4,56,788/-.

6. In appeal, the learned CIT(A) confirmed the disallowance of Rs.2,28,394/-. However, the fact of return of sales is found to be duly reflected in the financial statement of De-Param Healthcare appearing at page no.70 onward in the paper book. In fact, the copy of the P&L account duly certified by the Auditor, the copy of the ledger of sales return, sales return memo, goods transfer note etc. issued by the purchase parties has been duly filed by the assessee and has been carefully considered by us which is found to be sufficient to substantiate the involvement of high element of expenditure of net sale of Rs.7,16,890/- by the assessee. Hence, disallowance of Rs.2,28,394/- due to non-supporting evidence adduced by the assessee

deserves to be deleted. Thus, we delete the addition made by the authorities below.

7. In the result, assessee's appeal is allowed.

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

Sd/-
(P. M. JAGTAP)
VICE PRESIDENT

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