

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No.28/RPR/2020

(निर्धारण वर्ष / Assessment Year :2013-2014)

M/s Dayalal Meghji & Company, 3 rd Floor, D.M.Plaza, Chhotapara, Near Fire Brigade Chowk, Raipur	Vs	ACIT-4(1), Raipur
PAN No. : AACFD 0396 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri R.B.Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri G.N.Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	28/07/2022
घोषणा की तारीख/ Date of Pronouncement	:	21/09/2022

आदेश / O R D E R

Per Arun Khodpia, AM :

This appeal is filed by the assessee against the order passed by the CIT(A)-II, Raipur, dated 18.12.2019, for the assessment year 2013-2014, on the following ground :-

- Ld. CIT(A) erred in confirming the disallowance of Rs.26,25,213/- made by the AO out of Bidi Selling expenses & Bidi expenses. The disallowance made by AO and sustained by Ld. CIT(A) is not justified.*
- Brief facts of the case are that the assessee filed its return of income electronically on 28.09.2013 declaring total income of Rs.3,36,34,370/-, which was duly processed and statutory notices were issued to the assessee, in response to which the assessee filed his written submissions and required documents. The assessee has also filed books of accounts, audited financial statements, tax audit report in Form

No.3CB and 3CD along with bills and vouchers and bank statements. During the course of assessment proceedings, on being asked, the assessee filed a comparative chart of trading activities of the assessee from which the AO found that the sales of the assessee have been increased by 17.52% in comparison to last year. It was also found by the AO that the assessee had debited its profit and loss account towards Bidi selling expenses for Rs.87,57,029/- and bidi expenses for Rs.51,59,693/-. These expenses have been increased by 37.17% and 60% respectively in comparison to last year whereas sale of bidi is not increased in proportional to these increased expenses. It was also found that the payments are made in self made vouchers and paid in cash. Therefore, the AO disallowed Rs.26,25,213/- out of the total expenses claimed by the assessee as these expenses are not in proportion of increase in sale, which are not verifiable. Further the AO observed that the assessee has paid bonus to its employees who are drawing more than the limit prescribed by the Bonus Payment Act, therefore, the AO disallowed Rs.5,09,905/- as bonus paid to the employees.

3. Being aggrieved with the assessment order, the assessee preferred appeal before the CIT(A) and the CIT(A) sustained the addition made by the AO arising out of the bidi selling expenses claimed by the assessee and deleted the addition made by the AO on account of bonus paid to the employee by the assessee.

4. Against the above order of CIT(A), the assessee is in appeal before the Tribunal.

5. Ld. AR before us submitted that the Ld AO has disallowed a sum of Rs. 26,25,213/- out of the expenses claimed by the appellant under the head (A) Bidi Selling Expenses for Rs. 87,57,029/- and (B) Bidi Expenses for Rs. 51,59,692/-. The reason for disallowance assigned by the AO was disproportionate increase in the impugned expense to the tune of 37.17% and 60% as compare to the absolute figures of expenses incurred in the preceding year under the same head, whereas increase in sale of Bidi's was only 17.52%. One more reasons for disallowance observed by the AO was that the assessee had claimed the impugned expenses which were made in cash and are supported by handmade vouchers. Ld AR on this objection of the AO has submitted that :

(A) On/ submission against the disallowance on account of Bidi Selling Expenses is as under:-

(a) Last year i.e., Assessment Year 2012-13 total consignment sale was Rs.20,03,50,631/- after deducting Bidi Selling Expenses of Rs.59,63,988/- whereas in this year i.e., Assessment Year 2013-14 consignment sale was Rs.26,12,70,214/- after deducting Bidi Selling Expenses of Rs.82,86,039/-. Thus consignment sale has increased by Rs.6,09,19,583/-. In terms of percentage the increase is by 30.41%.

(b) Consignment expenses have not been paid in cash. Consignment expenses which are part of Bidi Selling expenses have been given to the parties, who have affected consignment sale, by way of journal entry, crediting consignment expenses in party's accounts. Thus the presumption by Assessing Officer that expenses have been incurred in cash is wholly and totally incorrect.

(c) We would like to stress here that all the Bidi Selling expenses have been incurred wholly and exclusively for the purpose of business of the appellant firm. No hand made vouchers are prepared and no payment has been made in cash. All the expenses are fully vouched and verifiable. Books of Accounts are audited.

Not a single item of disallowable nature has been pointed out by the Assessing Officer. Disallowance has been made on presumption and surmises. Copy of Bidi Selling expenses is enclosed for your perusal.

(B) Our submission against the disallowance on account of Bidi Expenses:

During the year under consideration the appellant firm incurred a total sum of Rs.51,59,693/- towards Bidi Expenses as against Rs.32,24,467/- incurred last year. Thus there is increase of Rs. 19,35,226/- in Bidi Expenses.

Reasons for increase:

(a) During the year under consideration the production of Bidis is increased by 6.78%.

(b) Bidi katta contains various quantities of Bidi sticks such as Bidi katta contains 25, 18, 17,16, 15, 14, 13 & 12 sticks according to demand in market. The appellant firm has various branches in Chhattisgarh, Orissa and West Bengal. Till last year Bidi katta were prepared wherein each katta contained 17 to 25 bidi sticks. There were also some kattas which contained still lesser quantity of bidi sticks.

However looking to the demand in the market, during the year under consideration the appellant firm had to produce such bidi kattas which contained 14 sticks of bidis. Katta containing 14 nos. of sticks was in more demand in comparison to other kattas.

We would like to state here that Bidi workers had to work hard and spend more time in preparing bidi kattas containing 14 sticks of bidis in comparison to bidi kattas containing 25 nos. of bidi sticks. Thus the appellant firm was required to incur more expenses towards labour cost. We are enclosing a chart wherefrom your honour will observe that the appellant firm had to incur additional cost of Rs. 16,04,233/- for preparing bidi kattas having 12 to 16 no. of sticks.

Thus the increase in bidi expenses is fully verifiable and justifiable. All the expenses have been incurred wholly and exclusively for the purpose of business of the appellant firm and not a single item of disallowable nature has been pointed out by the A.O.

6. It is further submitted by the Ld AR, that Ld AO himself had observed and mentioned in the assessment order that there was an increase in the Net and Gross Profit of the assessee, hence no adverse inference is warranted. The disallowance made was on the basis of presumptions, and surmises, thus cannot be hold good in the eyes of

law. Ld AR relied on the following judgments in support of assessee's contentions:-

(i) Uttam Chuna Pathar Udyog vs. ITO (1998) 65 ITD 460 (Jp.)
In this case it was held that there can be internal vouchers yet they can be relied upon, depending Upon tilts oasis of tlieir preparation. It was further held that lack of some vouchers e&M6t be (he basis of making disallowance.

(ii) Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SO)
In this case, it was held that the AO cannot make an assessment on pure guess work, without reference to any material or evidence.

(iii) ITO vs. Adhunik Khanan Va Parivahan Theka Sahkari Samiti Ltd. (2014) 41 CCH 86 (Jodh.) (Trib.)

In this case, it was found that disallowance was made by AO on the basis of self made vouchers and in general and routine manner without any specific instance of bogus claim. It was held that such disallowance cannot be sustained. It was also found in this case that the GP rate was progressive and the AO had not pointed out any specific case of non business or of bogus/in-genuine expenditure. Addition was held to be not justified.

(iv) CIT vs S.S.P. (P) Ltd. (2011) 79 CCH 552 (P&H), (2011) 202 Taxman 386 P &H)

It was held that adhoc disallowance out of expenses is not justified without showing that the same were not incurred for the purpose of business.

The disallowance of Rs.26,25,213/- made out of Bidi Selling expenses and Bidi expenses is incorrect and the same be deleted.

7. In the backdrop of above submissions the Ld AR on behalf of the assessee has prayed to delete the disallowance made by the AO and relief may be granted to the appellant.

8. On the other hand, Ld. Sr.DR vehemently supported the observations of the AO and decision of the Ld CIT(A) putting his full reliance on the orders of revenue authorities and submitted that the

findings of the AO and Ld CIT(A) are well deliberated, lawful and justifiable therefore deserves to be upheld.

9. We have heard the rival contentions, perused the material available before us and carefully studied the jurisprudences expounded by the Hon'ble Courts, relied upon by the Ld AR.

10. Prima facie, the observation of the AO with respect to increase in the absolute volume and % of expenses analysed by Ld AO was found arithmetically and factually correct and thus not challenged. However, the adhoc addition made by the AO based on observation that the vouchers are self made, payments were made in cash, expenses are not fully verifiable and mainly have emphasised that the possibility of inflation in the expenses can't be ruled out. Such a finding based on possibilities is nothing but assumption which is not permitted under the law. It is also transpires from the assessment order that the % Net profit and % Gross profit of the assessee are increased and an improvement in the same was noted by the AO.

11. Concerning the issue in hand, observation of the coordinate bench of the ITAT Raipur in the case of Porwal Industries Vs ITO in ITA no. 258/RPR/2017 are relevant that *"As per mandate of law the allowability of an assessee's claim for deduction of an expenditure which may had witnessed an increase as in comparison to that of the preceding year is not dependent upon the fact that as to whether or not the same had been incurred by the assessee wholly and exclusively for the purpose of its business and; that the same is not in the nature of a capital expenditure;*

nor an expenditure incurred in the personal field; non an expenditure incurred for any purpose which is an offence or prohibited by law.”

12. In the present case the assessee had passed all such tests on which an expense needs to be allowed. However, the lower authorities have not analysed the expenditure on these benchmarks as described in the case of Porwal Industries Vs ITO (supra) but have objected only towards increase in the % and volume of the expenses, based on their own presumptions, alleging that the required basic figures were not furnished by the assessee, without confronting the assessee for the same. The addition was made without placing any reference to specific vouchers. Specific payment in cash, as alleged by the AO, were also not identified, where the disallowance if any called for should be tested under the provision of section 40A(3) of the Act.

13. Further, it is observed that the rate of profit of the assessee is increasing for the impugned year as compared to preceding year. However, a disallowance was made doubting on the genuineness of the expenses but before forming such an opinion no specific instance of the expenditure incurred was pointed out by the AO where the expenses were not incurred for the business purpose or are ingenuine while alleging that the same are not verifiable. An adhoc disallowance based on disproportionate increase in expenses without marking a particular transaction is bad in law, allowability of the expenses should always be tested as per prevailing provisions of law and not based on possibilities or probabilities. We therefore are of the considered opinion that the

disallowance made by AO and upheld by the Ld CIT(A) are not on the basis of proper appreciation of the material facts, observations of the authorities below are on presumptions and thus the disallowance made is liable to be deleted. Accordingly, the order of CIT(A) on this issue is set aside and disallowance of Rs. 26,25,213/- is deleted.

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

Order pronounced in pursuance to Rule 34(4) of ITAT Rules, 1963 on 21/09/ 2022.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 21/09/2022

Prakash Kumar Mishra, Sr.P.S.

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur