

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1899/Mum/2022 (A.Y. 2014-15)

Hemson Private Limited 48, Mistry Industrial Complex, MIDC Cross Road-A, Andheri East Mumbai-400 093. PAN : AAACH5549J (Appellant)	Vs.	DCIT, Circle- 2(1)(1) Mumbai. (Respondent)
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Assessee by	Shri Ravish Bhasin/Amicus Curiae-Shri Jayant Bhatt
Department by	Ms. Indira Adani
Date of Hearing	03.10.2022
Date of Pronouncement	04.10.2022

ORDER

The assessee has filed this appeal challenging the order dated 2.6.2022 passed by National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15.

2. At the time of hearing, the director of the assessee company appeared in person and sought adjournment on the reasoning that various details have to be collated by him and further a counsel has to be appointed. When the Bench examined the orders passed by the authorities below and made certain enquiries with the director who was present, he pleaded that the Bench may take reasonable view in the matter under dispute. Since the bench felt that there should be a proper representation, the Bench requested Shri Jayant Bhatt, Chartered Accountant, who was present in the Court, to act as “amicus curie” in this matter in order to help the Bench. Shri Jayant Bhatt studied the file and advanced his arguments.

3. The only issue contested in this appeal relates to the decision of the learned CIT(A) in partially sustaining the disallowance of expenses made by the Assessing Officer.

4. The assessee is engaged in the business of manufacturing machineries and accessories used in pharmaceutical industry. The AO noticed that, during the year under consideration, the assessee did not carry on any business. Further, the AO noticed that the assessee has claimed following expenses aggregating to Rs. 23.68 lakhs in the Profit and Loss account.

Sr.No.	Particulars	Amount (Rs.)
1	Direct expenses	883812
2	Employee benefit expenses	810390
3	Operating and other expenses	593989
4	Depreciation & Amortisation	80460
		2368651

The AO noticed that the assessee has declared business loss of Rs.21,33,618/- and set off the same against the income declared under other heads. The Assessing Officer asked the assessee to prove the expenses, but the assessee did not furnish the details on the reasoning that its factory is closed due to labour strike. Hence the Assessing Officer disallowed the business loss of Rs.21,33,618/- declared by the assessee.

5. In the appellate proceedings, the learned CIT(A) directed the Assessing Officer to allow 50% of the expenses claimed by the assessee and accordingly granted partial relief to the assessee. Still aggrieved, the assessee has filed this appeal before the Tribunal.

6. The Amicus Curie, Shri Jayant Bhatt, CA submitted that the expenses incurred by the assessee were regular expenses incurred in the normal course of running of a business undertaking. He submitted that the assessee has incurred such type of expenses in the earlier years also and they have been allowed. Though the assessee has stopped the production activities during the

year under consideration, the assessee was constrained to maintain its establishment with the hope of revival of the production. The Learned AR further submitted that the production has been stopped by the assessee during the year, because of the intense labour troubles faced by the company due to strike, bandh and non-attendance by labourers. The learned AR submitted that this difficult situation has caused temporary lull in the activities of the assessee and hence there is no reason to disallow expenses incurred by the assessee in the normal course.

7. He further submitted that the director of the assessee has stated that most of these expenses have been incurred through banking channels by way of cheque payments and hence there was no element of bogus expenditure involved in these claims. The learned AR further submitted that the assessee could not furnish evidences in support of the claim due to problems faced by it due to strikes and other related causes. Accordingly the learned AR submitted that the learned CIT(A) should have fully allowed the expenses claimed by the assessee. He submitted that the very fact the learned CIT(A) has allowed 50% of the expenses would show that the expenses claimed by the assessee were not bogus. He further submitted that the disallowance of 50% of expenses due to non-production of the evidences is unreasonable and on the higher side.

8. The learned DR, on the contrary, supported the order passed by the learned CIT(A).

9. I heard the rival contentions and perused the record. It is stated that the assessee has stopped production during the year under consideration due to labour strike. It is also further stated that the most of the expenses have been incurred through banking channel. It is the submission of the learned AR that the assessee was carrying on the business/production in the earlier year and only during the year under consideration production had to be stopped. Hence, I am of the view that, in the facts and circumstances of the case, the stoppage of production should be taken as 'temporary lull' in the business and

hence there was no necessity in disallowing the entire expenses claimed by the assessee. I find my support for my view in the decision rendered by Delhi bench of Tribunal in the case of ITA No. 321/Del/2016 for AY 2011-12 in the case of Micro Turners (P) Ltd. vs. JCIT (Date of Judgment: 04/05/2016), wherein it was held as under:-

“..... we find that there is no dispute that whenever an assessee is able to establish that the expenses of rent staff and various other business expenses were incurred to keep its business alive they cannot be disallowed merely on the ground of temporary lull in business. Thus a temporary lull on account of the circumstances prevailing in the market cannot lead to the conclusion that the assessee has no intention to resume its business. The law on this issue is well-settled. Similarly the decisions in the context of the assessee company being an artificial judicial person which necessarily needs to incur expenditure to keep itself alive also are well-settled as the expenses incurred to keep the existence of the assessee company alive also cannot be disallowed on the ground that temporarily there is a lull in the business as there may be periods when there are intervals of inactivity due to no fault of the assessee and thus the expenses incurred for the business during this period cannot be disallowed.”

10. I noticed that the learned CIT(A) has granted partial relief to the assessee by restricting disallowance to 50% of the expenses claimed by the assessee. Hence, as contended by Ld A.R, the Ld CIT(A) has considered the expenses incurred by the assessee to be genuine and has sustained disallowance of part of expenses only for the reason that the assessee has not furnished evidences for incurring those expenses before the Assessing Officer. As contended by the learned AR, in my view, disallowance to the extent of 50% on account of non-furnishing of evidences is on the higher side, in the facts and circumstances of the case. I noticed that earlier the assessee was facing labour problem and meeting various contingencies and problems, which had threatened the very survival of the business. The director who appeared before me also submitted that the records were not properly placed because of the above problems and hence they could not readily lay their hands on the vouchers relating to the year under consideration. Hence, in my view, there reasonable cause for the assessee in not producing vouchers in support of the expenses claimed by the assessee. However, the fact remains that similar expenses incurred in the

earlier years have been allowed and this is the first year of stoppage of production.

11. Accordingly, in the facts and circumstances of the case, I am of the view that the dispute may be put to rest by making disallowance of part of expenses claimed by the assessee. This is due to the fact that considerable time, i.e., more than nine years have elapsed from the date of closure of the financial year. Hence, I am of the view that this issue should be settled at this stage. Considering the fact that similar expenses have been allowed in the earlier years and since it was submitted that most of the expenses have been incurred through banking channels and the nature of expenses would show that they are normal expenses incurred in the course of business, I am of the view that the disallowance of expenses for non-production of vouchers may be restricted to 10% of the expenses claimed by the assessee and, in my view, the same would meet the ends of justice.

12. Accordingly, I set aside the order passed by the learned CIT(A) and direct the Assessing Officer to restrict the disallowance to 10% of the expenses claimed by the assessee.

13. The bench would also like to appreciate Shri Jayant Bhatt, Chartered Accountant for accepting the request of the bench to act as amicus curie and offering able assistance to the bench.

14. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 04.10.2022.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 04/10/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai