

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.10/RPR/2018

(निर्धारण वर्ष / Assessment Year :2014-2015)

Venkateshwar Ispat Limited, 655-B, Urla Industrial Complex, Raipur	Vs	ITO-2(1), Raipur
PAN No. : AAACV 7829 H		
(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	:	04/08/2022
घोषणा की तारीख/ Date of Pronouncement	:	17/10/2022

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)-I, Raipur, dated 01.12.2017 for the assessment year 2014-2015 on the following grounds :-

- That, on the facts and in the circumstances of the case and in law, the learned AO has erred in adhoc disallowing a sum of Rs. 3,00,000/- out of stores spares and consumables consumed during the year Rs. 50,31,453/-, alleging that the expenditure has been increased about 60% during the year under consideration in comparison to expenditure incurred in the preceding year, where as turnover has been increased only by 10-15% which is not justifiable as per Learned Assessing officer, which is highly arbitrary, unwarranted and unjustified.*
- Brief facts of the case are that the assessee is a company engaged in the manufacture & sale of H.R. Strips, M.S. Flat & Re-rolled products. The assessee filed his return of income electronically on 30.09.2014 declaring total income at Rs.11,02,360/-. The AO thereafter completed the assessment and added back out of stores & spares consumed at

Rs.3,00,000/- whereby the expenses has gone by more than 60%. Against which the assessee filed appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee.

3. Now, the assessee is in further appeal before us against the order of the CIT(A).

4. Ld. AR submitted before us that the adhoc addition made by the Ld AO and confirmed by the Ld CIT(A) was total error on their part. He drew our attention to the finding of Ld AO in per para 5 of the Assessment Order wherein the reason for impugned addition of Rs. 3.00 lacs was explained, the same is extracted as under:-

5. On going through the other expenses of profit & loss account, it is seen that the assessee has debited an amount of Rs.50,31,453/- on account of stores & spares consumed. The corresponding figures of preceding year was Rs.30,97,819/-, meaning that the expenses has gone up by more than 60%. Stores and spares are directly related to manufacturing and production of goods and there should be proportionate rise in the sale. However, this is not the fact. The sales have barely grown by 10-15% and thus the consumption of stores and spares are not justifiable. On verifying the books, it was seen that some of the payments were made in cash and not supported by proper bills/vouchers and most of them were self made which did not contain the requisite details. Thus, it would be appropriate to disallow an amount of Rs.3,00,000/- out of such expenses and added to the total income of the assessee.

5. Ld AR further drew our attention to the para 2.3 of the Ld CIT(A)'s order, which reads as under:-

2.3 Appellant has contended that submissions and information were filed before the AO, still the disallowance has been made. AO has noted that payments have been made in cash and vouchers are not proper. If the expenses were genuine and made for business purpose, the details and supporting vouchers should have been during the appeal proceedings. In the absence of the same, assessee's claim cannot be verified. The addition is sustained.

6. Ld AR further submitted that aforesaid findings of the revenue authorities were without any specific finding with respect to the adhoc addition made. Ld AR thereafter drew our attention to assessee's submission before the Ld CIT(A) the same are extracted here under:-

SUBMISSION

The Appellant has debited and claimed Rs.50,31,453/- under the head stores & spares consumed during the year under consideration and in the preceding year was Rs.30,97,819. The learned AO disallowed Rs.3,00,000/-, alleging that the corresponding figures of preceding year was Rs.30,97,819/-, meaning that the expenses has gone by more than 60%. Stores and spares are directly related to manufacturing and production of goods and there should be proportionate rise In the sale. However, this is not the tact. The sales are barely grown by 10-15% and thus the consumption of stores and spares are not justifiable. It was also seen that some of the payments were made in cash and not supported by proper bills/vouchers and most of them were self-made which did not contain the requisite details. Thus, it would be appropriate to disallow an amount of Rs.3,00,000/- out of such expenses and added to the total income of the assessee.

We would like to submit before your honour that due to very bad market conditions the appellant company has switch over from one of the main product i.e. H.R.Strips, to another products i.e. M.S.Channel and Angle during the assessment year 2014-15. Due to developing the new product with perfect size and specification, the appellant company was require to consumed more Rolls, couplings etc. resulting variation in consumption of stores and spares consumables. For your ready reference, we would like to state that the appellant company have produced H.R.Strips during the assessment year 2013-14 was 5985.000 M.T. whereas in the assessment year 2014-15 it was 4444.620 M.T and also they produced New product i.e. M.S.Channel and angles 879.780 M.T. This is one of the major reason for increasing the utility of rolles under the head of stores, spares and consumables. The appellant company had purchased Rolls during the A.Y. 2014-15 of Rs. 25.88 Lacs and in the immediate previous assessment year 2013-14 it was Rs. 14.22 lacs, so there is increase of Rs.11.66 lacs, out of the total increase of stores, spares and consumables expenses of Rs. 19.33 lacs.

We would further like to state that during the year under consideration, the rate of finished goods and other products are drastically decreased, therefore, the turnover has not increased to such extent. Also, during the year under consideration, the consumption of store, spares and consumable has been increased in comparison to preceding year as the company runs its

manufacturing unit since last 25 years and the plants are very old and they require regular repair, maintenance and replacement of the parts. Due to the above facts the repairing & maintenance and replacement expenses of plants and consumption of store, spares and consumables keeps on increasing. Looking into the fact the comparison of consumption of store, spares and consumables with turnover is not justifiable.

Without prejudice to above, we further submit before your honour that the expenses incurred in this head are fully and exclusively for the purpose of business, which are required to be incurred to run a business successfully and normally. The Ld. AO on disallowed Rs.3,00,000/-, mere on conjectures and surmises. Each and every vouchers alongwith complete details of stores and spares consumed are available for verification.

The Appellant is private limited company and is subject to wide variety of audit and control checkpoints. Each bill is vouched, prepared and passed by the executive officers who are appointed by the Management. The expenditure has been wholly and exclusively incurred during the course of business. The assessee has produced entire books of account and vouchers for verification and furnished each and every details with regard to genuineness of expenditures incurred and submitted copies of bill vouchers etc. during the assessment proceedings. We further submit before your honour that all the above expenses are purely in nature of business expenses which satisfy all the basic conditions of the Section 37(1) of the Income tax Act, 1961. The basic conditions being :-

- 1. The amount is not a capital nature.*
- 2. The amount is not a personal expenditure.*
- 3. The amount has been incurred in the previous years.*
- 4. The amount has been incurred in respect of business of the assessee.*
- 5. The amount have been incurred wholly and exclusively for the purpose of the business.*

We further submit that the Appellant is a private limited company and is subject to large number of Acts and statutes like Income Tax, Sales Tax, Excise, Service Tax and other various duties and taxes. Moreover, the company is subject to various types of external audits apart from continues system of internal audit, which leaves no chance of misreporting. There are complete system of day to day reporting, internal control, checks and audit, the Appellant has maintained each and every record of transactions, maintained ail the necessary and required book of accounts such as cash books, generals, ledgers, purchase and sale registers and vouchers for expenses. The Appellant have already been produced all the above referred books of account before Ld. Assessing Officer. The

expenses debited by the appellant are fully based on the bills, vouchers and supporting, not a single specific instance of expenses debited without supporting pointed out by the Ld. AO.

The Ld. Assessing officer has made an ad-hoc disallowance, which is quite unreasonable, unwarranted and deserve to be deleted in total income as the contention of the Ld. AO is baseless, no any specific item pointed out by him on disallowable nature.

The Appellant also places reliance on the following judicial pronouncements:-

- (i) Dy. CIT V. Surface Finishing Equipment (2003) 81 TTJ (Jod-Trib) 448.*
- (ii) Vide Sundarmal Satpal v. ITO (2005) 94 TTJ 423 (Asr-Trib).*
- (iii) New Ambadi Estates (P.) Ltd. v. State of Tamil Nadu [1993] 200 ITR 64 (Mad.)*
- (iv) Nirmal Textile (P) Ltd. IAC (2005) 185 Taxatioin 84 (Del-Trib).*
- (v) M/s Maharaja Shree Umaid Mills Ltd. (1991) 192 ITR 565 (Raj)*
- (vi) St. Tereas's Mills V. State of Kerala 76 ITR 365.*
- (vii) Chandra Timber traders Vs. CIT (1996) 54 TTJ (Del-Trib) 544.*
- (viii) Prahaladas Hari Kishan Vs. Astd. CIT (1998) 60 TTJ (Ind-Trib) 27.*
- (ix) Jaipur Electro (P) Ltd. Vs. CIT (1997) 223 ITR 535 (Raj),*
- (x) Dy.CIT Vs. Surface Finishing Equipment (2003) 81 TTJ (Jod-Trib) 448.*

In view of the detailed factual and legal submissions above, we submit that towards stores and spares consumed has been incurred wholly and exclusively for the purposes of business and the deduction for the same ought to be fully allowed and disallowance made by the learned AO should be deleted.

We shall be pleased to provide any further clarification or information that your Honour may desired. Based on the above, we pray that relief may kindly be granted.

7. To substantiate claim of the assessee, Ld AR has submitted following case laws wherein the adhoc addition made on the basis of assumption and presumption were deleted.

ITO Vs Adhunik Khanan Va Parivahan Theka Sahkari Samiti Ltd. (2014) 41 CCH 86 (Jodh.), held in Para –14 as under :-

14. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is an admitted fact that the gross profit rate declared by the assessee was progressive in comparison to the preceding years and the Assessing Officer had not pointed out any

specific instance where the expenses were not incurred for the business purposes or claim of the assessee was bogus and non-genuine. Therefore, the addition made by the Assessing Officer on the basis of assumption and presumption was rightly deleted by the Ld. CIT(A). We do not see any infirmity in the impugned order on this issue. Accordingly, do not see any merit in this ground of the departmental appeal.

Porwal Industries V/s ITO, ITA 258/RPR/2017 dated 05.04.2022 (ITAT Raipur) – Held in Para 7 as under :-

7. We have given a thoughtful consideration to the aforesaid issue in hand, and are unable to persuade ourselves to subscribe to incongruous basis adopted by the lower authorities for disallowing the assessee's claim for deduction of commission expenses. As is discernible from the record, the assessee in the course of the proceedings before the CIT(Appeals) had placed on record confirmations of the commission agents as 'additional evidence', which were admitted by him. On a perusal of the orders of the lower authorities, we find that the genesis of the disallowance by the lower authorities of the assessee's claim for deduction of commission expenses is that the increase in the said expenditure did not satisfy the "benefit test" i.e, is not accompanied with a corresponding increase in the sales. At this stage, we may herein observe, that as per the 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 dependant upon a corresponding increase in the sales/profits during the year, but solely on 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; nor an expenditure incurred for any purpose which is an offence or prohibited by law. Interestingly, we find that not only both the lower authorities had by erroneously referring to the "benefit test" disallowed the assessee's claim for expenditure, but most surprisingly and rather beyond comprehension had restricted the said claim for deduction in the same ratio i.e., 5.44% in which sales for the year under consideration had witnessed an increase as in comparison to that of the immediately preceding year. We are unable to comprehend much the less subscribe to the aforesaid novel method adopted/subscribed to by the lower authorities, which we would not hesitate to observe is nothing short of an arithmetical formula adopted by the Assessing Officer for partly declining the assessee's claim for deduction of commission expenses. Although a steep rise of an expenditure during a year would raise serious doubts as regards the genuineness of the claim for deduction of the same by the assessee, but then, as observed by us hereinabove, the allowability or not of the same has to be tested as per the mandate of Section 37 of the Act; and not on the touchstone of satisfaction of the "benefit test" as had been done by the A.O in the present case.

Backed by our aforesaid observations, we are of the considered view that as the disallowance of the assessee's claim for deduction of commission expenses is not based on any material or observations which would lead to an irrefutable conclusion that the said expenditure was either not genuine or; was not incurred wholly and exclusively for the purpose of assessee's business within the meaning of section 37(1) of the Act, therefore, we set-aside the order of the CIT(Appeals) and delete the addition of Rs.8,29,120/- (supra) made by the Assessing Officer.

8. Based on above submissions, Ld AR contended that the expenditure on stores and spares consumed has been incurred wholly and exclusively for the purpose of business and deduction of the same should be fully allowed and disallowance made by the learned AO and upheld by the Ld CIT(A) are liable to be deleted.

9. On the other hand, Id. Sr. DR has vehemently supported the orders of the revenue authorities.

10. We have considered the rival contentions and submissions. On perusal of the orders of the authorities below, it has been emerged out that the basis of the addition was high increase as much as 60% in the impugned expenditure as compare to 10-15% increase in the sales, such an observation on the basis of doubt / assumption is not permitted, allowability of the expenditure should be tested as per the mandate of section 37 of the Act. Another observation of the AO that some of the payment were made in cash and not supported with proper bills/ vouchers, most of them were self made without requisite details. Such observation of the Ld AO was generalised and not specific. Disallowance was made for an adhoc amount without any specific material or observation to hold the said expenditure ingenuine. It was also not established by the revenue that the expenditure incurred was not wholly

and exclusively for business purpose within the meaning of section 37(10) of the IT Act.

11. In backdrop of the aforesaid observations and following the judicial precedence as relied upon by the Ld AR, the issue raised by the assessee in the present appeal is covered by the ratio of decisions of Coordinate bench of the ITAT referred to herein above (supra). We are of the view that addition made by the Ld AO is not sustainable and thus the order of the Ld CIT(A) confirming the said addition is liable to be set aside, thus we do so.

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

Order pronounced in pursuance to Rule 34(4) of ITAT Rules, 1963 court on 17/10/2022.

**Sd/-
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 17/10/2022

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