

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2686/Del/2019  
(Assessment Year: 2014-15)

Gryphon Appliances Ltd,  
B-1/A-6, Mohan Estate,  
New Delhi  
(Appellant)

Vs. DCIT,  
Circle-10(2),  
New Delhi  
(Respondent)

**PAN: AABCG2898J**

Assessee by :  
Revenue by :

Shri Sushil Wadhwa, CA  
Shri Anuj Gupta, Sr. DR

Date of Hearing  
Date of pronouncement

07/11/2022  
15/11/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 31.01.2019 of Ld. CIT(A)-4, New Delhi (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 30.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Dy. CIT, Circle-10(2) New Delhi (hereinafter referred as the Ld. AO).

2. Facts of the case are that the assessee is a Public Limited Company under the name and style Gryphon Appliances Limited. During the financial year relevant to the Assessment Year 2014-15, the year in respect of which appeal is preferred, the appellant was carrying on the business of Trading/distribution of a range of domestic kitchen appliances products of Black & Decker. Gryphon & Hitkari. Return declaring Income of Rs. 32,52,680/- was filed on 26.11.2014. The same was processed u/s 143(1).

The assessment has been completed u/s 143(3) by making certain additions as follows:

<i>S. No.</i>	<i>Head of Expenditure</i>	<i>Basis of Disallowances</i>	<i>Disallowance by the Learned A.O.</i>
<i>i)</i>	<i>Disallowance of Commission Expenses</i>	<i>Revenue Expenditure</i>	<i>33,27,279/-</i>
<i>ii)</i>	<i>Disallowances of Travelling Expenses</i>	<i>Revenue Expenditure</i>	<i>13,91,270/-</i>
<i>hi)</i>	<i>Disallowance of Business promotion Expense</i>	<i>Revenue Expenditure</i>	<i>8,94,933/-</i>
<i>iv)</i>	<i>Disallowance of Penalties-Contractual</i>	<i>Revenue Expenditure</i>	<i>75,960/-</i>
<i>v)</i>	<i>Disallowance of Repair and Maintenance of car</i>	<i>Revenue Expenditure</i>	<i>80,558/-</i>
<i>Vi)</i>	<i>Disallowance of Employee's contribution to PF.</i>	<i>Revenue Expenditure</i>	<i>19,629/-</i>

3. In appeal before the Id CIT(A) the assessee was able to get relief with regard to disallowances of travelling allowances, disallowances of canteen store department, disallowances on account of repair and maintenance of cars and disallowances on account of delay in deposit of employees contribution to EPF.

4. However, the disallowance of the commission expenses as prior period expenses and disallowance of the business promotion expenses @20% ad hoc was not only sustained but enhanced to whole of the amount. The assessee is in appeal before Tribunal with the following grounds:-

- "1. That disallowance of Rs.33,27,279/- u/s 37(1) of Income Tax Act,1961 by Assessing Officer and confirmation of the same by the Commissioner of Income Tax (Appeals) is contrary to facts and law.*
- 2. That disallowance of Rs.894933/- being 20% of Business promotion expense u/s 37(1) of Income Tax Act,1961 by Assessing Officer and enhancement of the same to Rs.4474666/- being 100% of business Promotion expense by the Commissioner of Income Tax (Appeals) is contrary to facts and law."*
5. Heard and perused the record.

6. **In regard to ground no 1** it was submitted that disallowance of Commission Expenses of Rs.46,06,393/- includes Rs.36,28,842/- paid to M/s Hitkari Potteries Ltd. The Appellant claims that it had entered into an agreement with Hitkari Potteries Ltd a well know brand in potteries and Ceramicware to market their product in their brand particularly to canteen store department(Army) and other government department. The company had agreed to pay them a commission based on turnover achieved in various years. However, in event of non achievement of sales, a minimum commission was guaranteed to M/s Hitkari Potteries Ltd .The company had advanced a sum of Rs. 25,00,000/- to M/s Hitkari Potteries Ltd at the inception of agreement viz. 30<sup>th</sup> January,2009 in order to secure the performance of agreement. The Appellant further advanced a sums of money to M/s Hitkari Potteries Ltd from time to time viz. Rs.4,72,335/- on 10.10.2011 and Rs.2,22,16/- on 11.01.2012.The Appellant was unable to achieve the desired turnover due to weak demand from Customers. Thus, triggering the minimum guarantee clause in respect of all licenced years i.e 2009-10,2010-11,2011-12,2012-13. The Appellant requested M/s Hitkari Potteries ltd to relax minimum guarantee clause due to poor sales arising out of circumstances beyond their control. M/s Hitkari potteries ltd. very kindly agreed to do so by settlement agreement dated-18 June.2012.However, the same was done subject to M/s Hitkari Potteries ltd forfeiting the amount deposited with them and as such the amount charged as expense in the year 2013-2014.

7. The Id AR referred to the settlement agreement dated 18.06.2012 available at page NO. 68 to 71 of the paper book and submitted that in terms of this settlement agreement vide letter dated 24.01.2014 available at page No. 72 of the paper book the amount lying with the Hitkari Potteries was forfeited. It was submitted that the amount of Rs. 33,27,279/- was not paid during the year but was lying the Hitkari Potteries ltd and same was forfeited for loss of commission of short sales and TDS was paid upon same. It was thus submitted that Tax Authorities below have fallen an error in

considering it to be prior period expenses. The Id DR defended the order of the Id Tax Authorities below.

8. Now it can be appreciated from the matter on record that before the Id AO only settlement dated 18.06.2012 was filed and the other letter dated 24.01.2014 as filed was not settlement document or a bilateral document but a unilateral letter of the assessee. The Id CIT(A) in para 6.1.5 observes that appellant had submitted letter dated 24.01.2014. The amount has been forfeited by the Pr. Company under direction of this letter. The Id CIT(A) disbelieved this letter with following findings:-

*"Before me the letter was submitted but the said letter does not bear the stamp of the company M/s Hitkari Potteries Private Limited. Also, it is noted that no amount is mentioned in such letter and no confirmation of account is furnished on record substantiating from the other party that the amount of Rs. 33,27,279/- was forfeited in the financial year 2013-14 and not prior to that. TDS return also was not furnished on record, substantiating that the TDS was deducted on the said amount. In view of the above, it is not possible to accept the appellant's claim of allowability of Rs.33,27,279/- on account of forfeiture of same during the year under consideration."*

9. However, it can be observed that at page No. 77 of the paper book form 16A issued by the assessee is available and refers to deduction of tax against this amount of Rs. 33,27,279/-. Nature of payment referred is u/s 194H which certainly is provision requiring deduction of tax on any income by way of commission or brokerage. Pertinent to mention is that the Id AO had referred in the assessment order about four amount claimed as commission expenses and these form No. 16A available at page 76 to 77 cover up all the four expenses under the head 194H of the Act.

10. The bench is of firm view that the Id CIT(A) has fallen an error in not giving due consideration to the letter dated 24.01.2014 of M/s. Hitkari Potteries Pvt. Ltd which specifically mentioned that the amount lying as security is being forfeited has compensation for loss of commission or short sales. The TDS deduction against the same stands paid by the appellant in present FY. Thus, the findings of the Id CIT(A) holding that payment was on

account of royalty and a prior period expense cannot be sustained. **The ground no 1 is allowed in favour of the assessee.**

11. **In regard to ground no 2** it was submitted that the Appellant had incurred Rs. 53,65,666/- towards business promotion expense. The Appellant had claimed Rs. 44,74,666/- as expenses toward business promotion pertaining to business activity of Appellant. The Appellant had voluntarily disallowed Rs. 8,91,000/- towards personal expenses of Managing Director/ Directors. It is pertinent to mention that the entire expenses has been made by Bank/Credit cards and as such are fully vouched leaving no scope for suspicion of wrongful claim. Hence, the disallowance is unjustified.

12. The Id AR submitted that the Tax Authorities below have fallen in error in not appreciating that the personal expenditure of the directors were suo motto deducted while claiming the expenditure. Referring to page no. 83 of the Paper book, the Id AR submitted that a total sum of Rs. 89,1000/- was reduced from the credit card expenditure which included purchases date 06.05.2013 with Indusind Bank credit card at duty free shop of Rs. 9395.34, which has been referred by Id CIT(A) in para 6.3.2 as having booked as business expenses. It was submitted that as the nature of business required frequent travelling and credit card in the name of directors of the company were use to entertain the clients the same are allowable as business promotion expenses. The Id DR however supported the finding of the Tax Authorities below.

13. In regard to this ground it is relevant to reproduce section 37(1) of the Act along with explanation:-

*"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under*

*the head "Profits and gains of business or profession".*

*Explanation 1.--For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."*

15. As from plain reading of the provision, it is clear that for an expenditure to be allowable under section 37(1) of the Act, it is required that the expenditure is:

- incurred during the previous year concerned and
- not in the nature described under section 30 to 36 of the Act,
- not capital expenditure or
- not personal expenses of the assessee, but it should be laid out or expended wholly and exclusive for the purpose of business

16. There is no dispute that the expenditure was incurred in the previous year concerned. The expenditure and sales promotion expenses being neither described under section 30 to 36 of the Act nor capital expenditure or personal expenses of the assessee and therefore, the only condition to be examined is whether the expenses was laid out or expended wholly and exclusively for the purpose of business.

17. As a matter of fact here in case in hand the assessee company has merely produced the credit card statements. The Id AO specifically refers to the fact in assessment order *that "while examining the books of account the AR of the assessee stated that it does not have any bills/ vouchers in respect of expenses claimed under this head except for the statement of credit cards."* As per the Id CIT(A) also no invoices or bills were furnished.

18. Then, Para 6.3.1 of the order the Id CIT(A) shows that a notice was issued to the appellant company to show cause as to why the addition be restricted to 20% only and not be enhanced to entire expenditure. It can be

observed that at page No. 74-75 of the paper book the copy of the show cause notice for enhancement dated 04.12.2018 is on record. However, the assessee has not filed any reply to the same and nor brought to the knowledge of bench if any reply to this notice was submitted.

19. It can be observed that only following expenses of Rs 89,1000/ through credit card have been accounted as personal expenses out of total expenses of Rs 44,74,666/- :-

ATEMENT DATE	TRANSACTION DATE	Particulars - v 0 ~ , ' -	Amounts
5-05-13 5-06-13 6-07-13 5-11-13	12-04-13 01-06-13 26-06-13 13-10-13	AMERICAN EXPRESS CREDIT CARD DAYAL OPTICALS NEW DELHI INDIA GREENWAYS SAREES CELEBRITY CRUISES MIAMI DELHI DUTY FREE-ins07	20000.00 f* 20000.00^ 69636.83^ 2805.71
03-06-13 03-06-13	06-05-13 03-09-13 03-11-13 22-02-14 25-02-14 25-02-14	INDUSIND BANK CREDIT CARD DUTYFREE Interest charges DUTY FREE DAYAL OPTICALS MINISREY OF COMPANY AF MINISREY OF COMPANY AF	9395.34 577.87 11338.41 100000.00 46227.23 263805.00
20-05-13 20-06-13 20-12-13 20-01-14 20-02-14	02-05-13 02-05-13 04-05-13 28-08-13 07-06-13 19-11-13 04-12-13 04-12-13 05-01-14 20-01-14 27-01-14 27-01-14	CITI BANK CREDIT CARD LOUIS VUITTON CHRISTIAN DIOR LOUIS VUITTON SERVICE TAX ROBERTO CAVALLI LONDON BG'S FASHIONS PVT. LTD .NEW DLEHI ZARA DELHI STEAVE MADDEN M MISSONI 103927158 HERMES NEW.DELHI BLISS DESIGN INDIA KJANAVI NEW DELHI	35800.00 13175.00- - 29900.00 12.36 56002.14 22948.00 18030.00 30996.00 44350.99 50000.00 26000.00 20000.00
		GRAND TOTAL	891000

20. However, going through the credit card statement available at page No. 84 to 117 of the PB, it is very apparent that all the expenses are of in the nature of bills of restaurant, dinning, hotels, clothing, fashion accessories, duty free shops, cosmetics, spa, gift shops and a total Rs. 44,74,666/- were spent by Directors through the credit card. The bench is of considered opinion that to substantiate the validity of

the expenditure of the nature referred above it is necessary to establish that the same can be laid out wholly and exclusively for the purpose of business, however, the assessee failed to establish the same by filing any vouchers or other evidences which would have shown that these expenses were for the procurement of business or for business negotiations or specific business promotion activity. In case of business promotion expenses, the assessee is expected to show that the expenses intended to achieve any specific or general business target or how it could have helped the promotion of business or business interest of the assessee. Specially, when the expenses incurred are not supported by any vouchers and are on heads that same are generally of personal nature like bills of restaurant, hotels, clothing, fashion accessories, duty free shops, cosmetics, spa, gift shops, it becomes all the more necessary that the expenses are explained with some probability of being spent for business promotion and not just personal or for superfluous social networking. Thus Ld AO was not justified to restrict the disallowance to ad hoc 20% and Ld. CIT(A), following due process of law has rightly enhanced the same. The same requires no interference and **ground no 2 is decided against the assessee.**

Consequently, **the appeal is partly allowed.**

Order pronounced in the open court on 15/11/2022.

-Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 15/11/2022

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi