

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 16/CHD/2020
Assessment Year : 2013-14

M/s Punjab Tissue Ltd., SCO 57, First Floor, Sector 20-C, Chandigarh.	बनाम VS	The ITO, Ward 2(3), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACP9907E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Advocate
राजस्व की ओर से/ Revenue by : Shri Akashdeep, JCIT, Sr.DR

तारीख/Date of Hearing : 30.11.2022
उद्घोषणा की तारीख/Date of Pronouncement : 15.12.2022

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee wherein the correctness of the order dated 15.11.2019 of CIT(A)-I Chandigarh pertaining to 2013-14 assessment year is challenged on the following ground :

- 1. That the order passed under section 250(6) by the Ld. Commissioner of Income Tax (Appeals)-I, Chandigarh in Appeal No. 10270/16-17 dated 15.11.2019 is contrary to law and facts of the case.*
- 2. That in the facts and circumstances of the case Learned Commissioner of Income Tax (Appeals)-I, Chandigarh gravely erred in upholding the action of the Id. Assessing Officer who had made addition of Rs. 24,05,249/- by disallowing the expenses incurred on electricity.*

3. That the appellant craves to add, amend or alter any ground of appeal before or at the time of hearing of appeal, with the permission of the Hon'ble Income Tax Appellate Tribunal, Chandigarh.

2. The relevant facts of the case are that the AO taking note of the fact that the assessee drawing income from manufacturing of card board in the year under consideration had not carried out any manufacturing and business activities. He noticed that the opening and closing stock was seen to be 'nil' and despite this fact, an expenditure of Rs.24,05,249/- on account of power and fuel expenses was claimed. The AO in order to verify the genuineness of the expenditure deputed an Inspector to visit the factory premises. It has been noticed as per record that there was no electricity connection with the assessee and there was one Security Guard available by the name of Shri Ramvachan who stated that since 2012, manufacturing activities had not taken place and that he was living in the factory premises for the last four years using a small generator. Record shows that summons were issued u/s 131 on 22.02.2016 requiring Shri Rachhram Singh (another Security Guard) and Shri Ramvachan. The Security Guards were required to appear before the AO for recording of statements on 25.02.2016. Shri Rachhram as per record submitted that he was working as Security Guard for the last

two years. As per record, information u/s 133(6) was also called forth from Executive Engineer, Punjab State Power Corporation Ltd., Kurali but no reply was received. Accordingly, after show causing the assessee and considering the reply, addition of Rs.24,05,249/- was made. The assessee challenged this addition before the First Appellate Authority who also confirmed the addition. Aggrieved, the assessee is in appeal before the ITAT.

3. The ld. AR inviting attention to the record submitted that the year under consideration is 2013-14 assessment year i.e. 2012-13 Financial Year and the statements are being recorded in February, 2016. Referring to the record, it was submitted that one Security Guard has been at the premises for two years and another Security Guard who is there for almost four years has also stated that the business was not functioning. These statements, it was submitted, record the facts as on 2016 and do not prove that in the year under consideration the business was not functioning. It was submitted that the business had been functioning, however, for want of orders for manufacturing of Gray Board in the year under consideration, the assessee went out of business. Inviting attention to the submissions advanced before the AO extracted in the order, it

was submitted that the assessee had vide his letter dated 30.01.2016 submitted that the business had not been closed and there was only a temporary lull in the business as a technical person had left. The electricity payments were as per the minimum charges of electricity. It has also been submitted that from its various sundry debtors the assessee has managed to recover Rs.8 lacs, hence it was argued that all possible efforts were made to keep the business functioning.

3.1 Inviting attention to the Paper Book filed, it was submitted that various other business related expenses have been allowed by the AO. Attention was invited to pages 28 to 39 which contains copies of bills raised by the Punjab State Power Corporation wherein the payments for the specific bills supported by the receipts were also available. It was his submission that merely because the Punjab State Power Corporation does not reply even to the AO, this fault cannot be laid at the doors of the assessee. The expenses were genuine and incurred for business.

3.2 Inviting attention to the Paper Book 40, it was submitted that when the Show Cause Notice issued by the AO is seen, it can be seen that the AO was considering disallowing

depreciation amounting to Rs.21,69,409/- on Plant & Machinery and miscellaneous factory assets alongwith electricity expenses. However, considering the business to be a going concern only Power and Fuel Expenses paid to State Electricity Corporation has been disallowed. It was his submission that apart from this business, there was nothing else with the assessee and there is no reason set out as to why the electricity expenses paid to a Government authority evidenced by Receipt on record for the Bills also on record has been disallowed. Accordingly, it was his prayer that the appeal of the assessee may be allowed.

3.3. In order to highlight the high handedness of the Authority, attention was invited to the impugned order, specific attention was invited to the fact that the assessee had specifically canvassed that statements of the two Security Guards had not been confronted to the assessee, despite that an incorrect fact is recorded in the order. Reference again was made to Show Cause Notice dated 25.02.2016 which is at page 40 of the Paper Book which would show that no statement of any person was confronted. Accordingly, it was his prayer that even otherwise, the impugned order has many shortcomings. Since specific redressal for these shortcomings

is not prayed for, the submission it was submitted, is only illustrative of how the assessee has been treated.

4. The ld. Sr.DR Mr. Akashdeep relied upon the orders. Specific emphasis was laid on the fact that the assessee had no opening or closing stock and no inventory. Hence, it was submitted, the business had infact closed. Accordingly, it was his submission that the electricity expenses were rightly disallowed.

5. We have heard the rival submissions and perused the material available on record. We find that in the facts of the present case, the fact that it was an ongoing business undergoing a lull has been accepted by the AO himself as various other business expenses have been allowed. It is further seen that the aforesaid payments in terms of the bills raised by the Punjab State Electricity Corporation is an evidence of third party evidence which cannot be easily discounted as a self created evidence. The payments have been made is also not in dispute. We further find that statements of two Security Guards in February,2016 in regard to the factual position of the assessee's business functioning in the year under consideration i.e. 2012-13 assessment year does not have much relevance. The fact that it has not been confronted

to the assessee is also a fact evident on the face of the record. We further find that merely because the Punjab State Electricity Corporation, even to the AO, has failed to respond and provide information u/s 133(6) is a fact for which the remedy lies with the Revenue. The assessee has no role to play and cannot be held to be answerable for the lapses of the Corporation. Considering the submissions of the assessee consistently on record wherein it is evident that the assessee tried to keep his business alive and viable and ultimately had to close down, expenses so disallowed in the facts of the present case cannot be sustained. Addition made is directed to be deleted. Said order was pronounced in the Open Court at the time of hearing itself.

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

Order pronounced in the Open Court on 15th December, 2022.

Sd/-

(VIKRAM SINGH YADAV)
लेखा सदस्य/ **Accountant Member**
"Poonam"

Sd/-

(DIVA SINGH)
न्यायिक सदस्य/ **Judicial Member**

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar