

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1601/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Groom India Salon and Spa Pvt. Ltd. (formerly known as Venus Spa and Solutions Pvt. Ltd.) No.90, Ganga Grikha, Nungambakkam High Road Chennai – 600 034.	बनाम / Vs.	ACIT Central Circle-2(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AADCV-0265-C		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri C.J. Yeswanthram (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Dr. R. Mohan Reddy (CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	16-02-2023
घोषणा की तारीख / Date of Pronouncement	:	16-02-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] dated 22-03-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 153A of the Act on 30-12-2016. The assessee has filed concise grounds which read as under:

1. The order of the Commissioner of Income Tax (Appeals) is erroneous, arbitrary and against the settled principles of law.

2. The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the explanation offered by the Appellant that the difference is only due to the reduction in the franchisee fee duly decided by the Board.
3. The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the fact that there was no incriminating material found during search action.
4. The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the statement under Section 132(4) itself cannot be treated as incriminating material.
5. The Commissioner of Income Tax (Appeals) erred in confirming the addition without appreciating the law that notice under Section 142(1) issued prior to notice under Section 143(2) is not maintainable.
6. The Commissioner of Income Tax (Appeals) erred in confirming the addition alleging difference in Form 26AS and books of account without considering the reconciliation statement provided by the Appellant.
7. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of depreciation claimed by the Appellant even when the payments for the purchase of fixed assets have been made through proper banking channels and the same is accounted in the books account.
8. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of expenditure without appreciating the fact that the Appellant produced supporting documents for verification at the time of assessment.

As is evident, four issues fall for our consideration i.e., (i) Addition of difference in franchisee income; (ii) Addition of unexplained expenditure; (iii) Addition of difference of 26AS reconciliation; (iv) disallowance of depreciation. No specific arguments have been made against grounds nos.1, 3 and 5.

2. Having heard rival submissions, the appeal is disposed-off as under. The assessee being resident corporate assessee is stated to be engaged in running chain of beauty parlors. The assessee was subjected to search proceedings and consequently, impugned assessment was framed against the assessee. During the course of search action, incriminating material was found which was marked as ANN/ST/GISL/LS/S. The statement of Managing Director Shri C.K.

Kumaravel was also recorded u/s 132(4) wherein he admitted certain income.

3. Addition of difference in franchisee income

3.1 The assessee was collecting franchisee fees from franchise-holders under an agreement. However, difference was found in the franchise fees of 44 entities as mentioned in the agreement and as recorded in the books of accounts. This difference aggregated to Rs.70.68 Lacs for FYs 2009-10 to 2013-14. The difference for year under consideration amounted to Rs.16.53 Lacs. In statement recorded u/s 132(4), the Managing Director offered additional amount of Rs.71 Lacs in this respect. During the course of assessment proceedings also, the assessee could not provide any rational explanation to explain the difference. The Ld. AO noted that the franchise fees were one-time non-refundable fees and received by the assessee upon entering into contract. The fee was to allow the franchisee to use various brands of the assessee and it was to be treated as income of the assessee in the year of receipt since the payment was directly linked to franchise agreement and a pre-condition for signing the agreement, Accordingly the amount of Rs.16.53 Lacs was added to the income of the assessee. The Ld. CIT(A) endorsed the view of Ld. AO by observing that it was agreed addition. Further, differences were noted in the fee mentioned in the agreements and as reflected by the assessee in the books of accounts. The difference was never offered to tax by the assessee. Aggrieved, the assessee is in further appeal before us.

3.2 From the factual matrix, it emerges that this addition from the fact that difference has been noted in the fee mentioned in the franchisee

agreement vis-à-vis the fee offered by the assessee in the books of accounts. The difference of income has never been offered by the assessee. It could also be noted that this addition is based on incriminating material unearthed by the department during the course of search proceedings and the same is coupled by the statement of Managing Director recorded u/s 132(4) wherein admission has been made that this income was undisclosed income and the assessee agreed to offer the same to tax. Therefore, impugned order, on this issue, stand confirmed.

4. Addition of unexplained expenditure

4.1 The search findings revealed lack of supporting vouchers for purchase of raw material for saloons. The Managing Director offered additional income of Rs.32 Lacs on this account. Most of the expenditure was in cash against self-made vouchers. During assessment proceedings, the assessee quantified such expenditure at Rs.22.31 Lacs. However, rejecting the same, Ld. AO held that the expenses were not genuine and accordingly, the aforesaid sum was added to the income of the assessee. The Ld. CIT(A) held that confirmation of disallowance of Rs.22.31 Lacs would meet the end of justice. The said sum has been offered by the assessee after verifying the evidences. Aggrieved, the assessee is in further appeal before us.

4.2 We find that this position taken by Ld. CIT(A) remain the same before us. The assessee is unable to substantiate the purchase of raw material with requisite bills / vouchers and it could also be seen that the expenses have been incurred in cash. In such a scenario, no interference is called for in the impugned order, on this issue. The corresponding grounds raised by the assessee stand dismissed.

5. Addition of difference of 26AS reconciliation

5.1 An addition of Rs.211.58 Lacs was made for difference in amount reflected in Form 26AS vis-à-vis receipts reflected by the assessee in Profit & Loss Account. The same has been tabulated by Ld. AO in para-7 of the order. In the absence of any reconciliation, the amount was added to the income of the assessee. The Ld. CIT(A) upheld the same on the ground that it was agreed addition.

5.2 The Ld. AR has filed a copy of Form 26AS and submitted that one of the party (M/s Wella India Hair Cosmetics Pvt. Ltd.) against whom major difference arises, has rectified the TDS statement and the credits appearing against the same in Form 26AS has been reduced substantially and accordingly, the different to that extent should be eliminated. Considering the same, we direct Ld. AO to verify the same with a direction to the assessee to substantiate its claim, in this regard. This ground stand partly allowed for statistical purposes.

6. Disallowance of depreciation

6.1 The Ld. AO disallowed depreciation of Rs.0.62 Lacs since the assessee could not file details of parties from whom fixed assets were purchased and the purchase of assets was not supported by bills / vouchers. The Ld. CIT(A) endorsed the view of Ld. AO. Aggrieved, the assessee is in further appeal before us.

6.2 Before us also, the assessee could not place any supporting vouchers proving the purchase of assets. Therefore, no interference is required in the impugned order, on this issue. No other issue has been urged in the appeal.

Conclusion

7. The appeal stands partly allowed for statistical purposes.

Order pronounced on 16th February, 2023.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 16-02-2023
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5.
गार्ड फाईल/GF