

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2722/Del/2019
(Assessment Year: 2013-14)

Aradhana Foods and Juices P. Ltd, (now merged with Pepsico India Holdings Pvt Ltd), Pioneer Square, Level-3-6, Sector-62, Near Golf Course Extension Road, Gurgaon (Appellant) PAN: AAACP1272G	Vs.	DCIT, Central Circle-7, New Delhi (Respondent)
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ITA No. 3230/Del/2019
(Assessment Year: 2013-14)

DCIT, Central Circle-7, New Delhi (Appellant) PAN: AAACP1272G	Vs.	Aradhana Foods and Juices P. Ltd, (now merged with Pepsico India Holdings Pvt Ltd), Pioneer Square, Level-3-6, Sector-62, Near Golf Course Extension Road, Gurgaon (Respondent)
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Assessee by :	Sh. Deepak Chopra, Adv Ms. Priya Tandon, Adv
Revenue by:	Sh. P. Praveen Sidharth, CIT DR
Date of Hearing	15/02/2023
Date of pronouncement	12/05/2023

ORDER

PER C. M. GARG, J. M.:

1. These are the appeals filed by the assessee and the revenue against the order of the Id CIT(A)-32, New Delhi dated 21.01.2019 for AY 2013-14.
2. The sole ground raised by the assessee pertains to the order of Id CIT(A) upholding the ad hoc disallowance of Rs. 2,78,44,608/-

being 2% of the operating expenses incurred during the year under consideration, on the ground that the expenses were unverified, unreasonable and excessive, hence, not allowable under the provisions of section 37(1) of the Act.

3. The revenue has also filed appeal raising following grounds of appeal:-

- "1. The order of Ld. CIT(A) is not correct in law and facts.*
- 2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowance out of operating expenses claimed by the assessee from 10% of the expenses claimed i.e. Rs. 13,92,23,044/- to merely 2% of the expenses i.e. Rs. 2,78,44,608/- for the A.Y 2013-14.*
- 3. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting disallowance out of operating expenses claimed by the assessee could substantiate its claim of operating expenses debited in the books of accounts with requisite supporting evidence/ bills etc. and genuineness of claim thereof was not verifiable.*
- 4. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowances out of operating expenses even when he himself held that the assessee has failed to discharge its onus to substantiate the claim of operating expenses in the books of accounts and without any basis has restricted the extent of disallowance from 10% to merely 2% of the operating expenses claimed by the assessee.*
- 5. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the disallowances out of operating expenses even when he noted that similar disallowance has been made in the case of assessee for earlier assessment year also.*
- 6. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,60,36,627/- made by the A.O by way of restricting the claim of depreciation expenses on crates claimed by the assessee.*
- 7. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by way of disallowance out of depreciation expenses claimed on account of crates even when in the case of assessee itself the issue of allowance of rate of depreciation on crates went upto the Hon'ble High court for A.Y 2009-10 and the Hon'ble High Court vide order dated 21.08.2018 has set aside the issue back to the file of Hon'ble ITAT for fresh examination. The applicant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal."*

4. The sole ground of assessee and ground Nos. 2, 3 and 4 of revenue are inter-related as the AO made disallowance of 10% of total operating expenditure which was restricted to 2% by the Id CIT(A) granting relief of 8% to the assessee. Before us the assessee has challenged the confirmation of 2% addition on account of operating expenses and the revenue has challenged part deletion of 8% of addition on the same account of operating expenses.

5. The Id counsel submitted that there is no order against the assessee alleging that the claim of operating expenses is either bogus or false or the quantum claim of the assessee is not correct. The Id counsel submitted that the department has consistently allowing the claim of the assessee which is clearly discernable from the orders for AO dated 17.06.2019 & 26.03.2019 respectively for AY 2007-08 & 2012-13 hence, no disallowances is called for in this regard. Therefore, Ld. AR submitted that the Id CIT(A) was not correct in restricting the disallowances to the tune of Rs. 2%. The Id AR vehemently pointed out that firstly, the Id CIT(A) has properly appreciated the facts of the case and explanation of the assessee on this issue and in para 6.3.1 categorically noted that the appellant has produced the copy of ledger account as some of the expenses like travelling & conveyance, advertisement and marketing, communication, miscellaneous expenses and provisions for inventory loss. However, it was noted that the appellant has not submitted any bill for substantiating the claim of operating expenses. In this situation, the Id CIT(A) held that he find force in the claim of AO that the contention of the appellant has not been substantiated by supporting documentary evidence.

6. We are in agreement with the conclusion drawn by the Id CIT(A) that onus cost upon the assessee to establish its claim regarding claim of expenditure has not been fully discharged. The Id CIT(A) also noted that during the earlier assessment year identical disallowances has been made by the AO. Thereafter, the Id CIT(A)

noted that disallowance @10% appeared to be steep and on the higher side. Therefore, after considering the fact that the account of the appellant are maintained and duly audited by the statutory auditors. After considering the entire facts and circumstances the Id CIT(A) rightly restricted the disallowances to the tune of 2% granting relief to the assessee deleting the part addition of 8% made by the AO.

7. Ld DR, however, supported the part confirmation of disallowances by the Id CIT(A) but has stressed upon fact that the Id CIT(A) restricted the disallowance to 2% despite the fact that the assessee could not substantiate its claim of operating expenses debited in its books of account without requisite supporting evidence/ bills etc and therefore, genuineness of the entire claim was not verifiable. In view of the foregoing, and after considering the rival submission on the issue we are inclined to hold that since the assessee failed to submit relevant bills and vouchers etc. pertaining to the entire claim of operating expenses debited in the books of account with the requisite supporting evidence/ bills etc thus, the assessee has failed to discharge its complete onus to substantiate the claim of operating expenses. In such a situation, the AO was right in making part disallowances of operating expenditure claimed by the assessee.

8. However, the Id CIT(A) rightly noted that the disallowances @10% is higher side and therefore, keeping in view the factum of audited books of account by the statutory auditor and also failure of the assessee to discharge its complete onus by way of submission of requisite supporting evidence/ bills. The Id CIT(A) has rightly restricted the disallowance to 2% of total claim instead of 10% as made by the AO on account of operating expenses. in view of the above we have no hesitation to hold that the Id CIT(A) has taken a very balances and justified approach in upholding the action of the AO in making disallowance on account of operating expenses and he

was also right in reducing the disallowance from 10% to 2% keeping in view the entire facts and circumstances of the case. Before we part we make, it clear that the Id AR has demonstrated that there was no disallowance by the AO for AY 2007-08 and 2012-13 and issue in AY 2011-12 was restored to the file of AO for verification by the AO. But at the same time we clearly note that the Id AR could not controvert or tarnish the contention of the AO, as also action taken into consideration by the Id CIT(A) in para 6.3.1 of first appellate authority order, that the assessee has not discharge its onus by submitting complete bills and vouchers pertaining to the claim of operating expenses. Therefore, facts and circumstances of relevant A.Y. 2013-14 and different and dissimilar to the facts of A.Y. 2007-08, 2011-12 & 2012-13 and thus, rule of consistency has no application in present A.Y. 2013-14 on this issue. Therefore, no interference is called for in the first appellate order on this issue and we uphold the conclusion drawn by the Id CIT(A) with the conclusion that claim of assessee on operating expenses deserves to be disallowed to the tune of 2% of total claim. Consequently, sole ground of assessee and ground Nos. 2,3, 4 and 5 of the revenue are dismissed.

Ground No. 6, 7 of revenue:-

9. The Id DR supported the assessment order and submitted that AO was quite correct and justified in making disallowance of Rs. 1,60,36,627/- on account of excess depreciation claim on crates by included in block 'bottles and shell'. The Id DR submitted that the Id CIT(A) granted relief to the assessee without any basis therefore, the impugned first appellate order may kindly be set aside by restoring that of the AO.

10. Replying to the above, the Id AR submitted that copy of the order of ITAT E Bench dated 09.05.2018 in ITA No. 174/Del/2016 for AY 2011-12 and submitted that identical issue was raised by the revenue before the Tribunal and the ground of revenue was

dismissed by the Tribunal by holding that since the assessee has been allowed depreciation @100% the claim of assessee @50% on such plastic crates is quite justified. On being asked by the bench the Id DR did not controvert that the Tribunal has granted relief to the assessee by dismissing appeal of revenue and upholding the order of the Id CIT(A) wherein, the disallowance of depreciation was deleted by the Id CIT(A).

11. On careful reading of Tribunal order in assessee's own case for AY 2011-12 we note that the Id CIT(A) deleted the addition made by the AO on account of claim of depreciation. The revenue carried the matter before the Tribunal and appeal of the assessee was allowed by the Tribunal by following observation advanced at para 5 as under:-

"5. After considering the relevant finding given in the impugned order, we find that the only issue involved in this appeal is with regard to restricting of rate of depreciation on crates which has been included in the block of assets as bottles and shells for which depreciation has been claimed from 50% and restricted by AO at @ 15%. First of all, it is not in dispute that similar rate of depreciation has been allowed either by the AO or by the appellate authorities @50% in the earlier years and therefore, we agree with the finding of the Ld. CIT (A) that, once on similar issue and on same assets depreciation has been allowed @ 50%, then in view of the principle of consistency no different view could have been taken. The crates used by the assessee are made of plastics which are used as refills for transportation and storage of the glass bottles from place of sale/distribution; and after consumption of the beverage, empty crates / bottles are transported back to factory for refilling. The assessee has given very detailed literature on this point before the authorities below and submitted that the crates were made up of low quality plastic material and have a very short lifespan, not exceeding 6 months to 1 year and therefore, higher rate of depreciation @ 50% is applicable as per income Tax Rules 5 Appendix I. Besides this, we also find that there are many judgments of Hon'ble High Court like; CIT vs. Madurai Soft drinks Pvt. Ltd. (2005) 197 CTR 480 (Madras), wherein crates and bottles have been allowed depreciation @ 100%; and similarly view has been taken in the cases of CIT vs. Aqueous Victuals (P.) Ltd. 139 Taxman 33(All.) , CIT vs. Agra Beverages Corporation (P) Ltd. 219 CTR 662, CIT vs. Sr. Krishna Bottlers (P) Ltd. 40 Taxman 15 (AP). In all these cases the assessee has been allowed depreciation @ 100% on crates, therefore, assessee's claim of 50% on such plastic crates is quite justified and accordingly, we

do not find any infirmity in the order of the Ld. CIT (A) and the same is affirmed."

12. The Id DR could not show us any different and distinguish facts and circumstances pertaining to present AY 2013-14 from 2011-12 on the issue of claim of depreciation of the assessee which could lead us to take different view as has been taken by the Tribunal in AY 2011-12. Therefore, respectfully following the order of the Tribunal order dated 09.05.2018 for AY 2011-12 (supra) we hold that the ground Nos. 6 and 7 of the revenue for AY 2013-14 are devoid of merits and therefore we dismiss the same.

13. In the result, the appeal of the assessee as well as revenue are dismissed.

Order pronounced in the open court on 12/05/2023.

-Sd/-

(B. R. R. Kumar)
ACCOUNTANT MEMBER

-Sd/-

(C. M. GARG)
JUDICIAL MEMBER

Dated: 12/05/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi