

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.9345/Del/2019
Assessment Year: 2014-15

M/s. HPL Additives Ltd., 803, Vishal Bhawan, 95, Nehru Place, New Delhi 11009. PAN AAACH 0110 P	vs.	The DCIT, Circle 11(2), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Manish Kumar, Adv.
For Revenue :	Ms. Maimun Alam, Sr. DR

Date of Hearing :	26.04.2023
Date of Pronouncement :	27.06.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of CIT(A)-4 New Delhi dated 09.10.2019 for AY 2014-15.

2. The grounds raised by the assessee are as under:-

1. The CIT(A) erred in enhancing the addition relating to Advertisement & Marketing Expenses from Rs 3,00,000/- to Rs 18,18,624/- Primarily on adhoc basis without appreciating the business exigencies and further without appreciating that the expenses were incurred wholly and exclusively for the purpose of business and the disallowance is against the commercial expediency.

2. The CIT(A) while enhancing the disallowance relating to Advertisement & Marketing expenses erred by not appreciating that the expenses incurred through credit card by JMD of the Company during his Foreign Visit on Purchase of Gifts, Dinner etc with Clients are Customary in nature and with a view to Promote Export Business of the assessee company and it has no any personal element.

3. The CIT(A) erred by enhancing the disallowance to Rs 18,18,624/- without appreciating that the account of the assessee is audited and the disallowance is

completely based on Surmise and guesswork which cannot partake the character of evidence.

4. The CIT(A) failed to appreciate that the Credit Card always issued in individual name of the director which is being commonly used and if any expenditure of personnel in nature, the same has been separately accounted for and not been claimed as business expenses applying business prudence.

3. The Id. counsel of assessee submitted that the addition relating to Advertisement & Marketing Expenses from Rs 3,00,000/- to Rs 18,18,624/- Primarily on adhoc basis without appreciating the business exigencies and further without appreciating that the expenses were incurred wholly and exclusively for the purpose of business and the disallowance is against the commercial expediency. He further submitted that the disallowance relating to Advertisement & Marketing expenses erred by not appreciating that the expenses incurred through credit card by JMD of the Company during his Foreign Visit on Purchase of Gifts, Dinner etc with Clients are Customary in nature and with a view to Promote Export Business of the assessee company and it has no any personal element. He also submitted that the disallowance to Rs 18,18,624/- without appreciating that the account of the assessee is audited and the disallowance is completely based on Surmise and guesswork which cannot partake the character of evidence. The Id. counsel drawing our attention towards submissions of assessee as well as paper book filed by the assessee submitted that the addition made by the Assessing Officer and enhance by the Id. CIT(A) is not valid and sustainable therefore the same may kindly be deleted.

4. Replying to the above, the Id. Senior DR strongly supported the orders of the authorities below and vehemently pointed out that the Id. CIT(A), after conducting detailed enquiry and analysis of the documentary evidences submitted by the assessee rightly enhance the disallowance/addition on account of advertisement and marketing expenses from Rs. 3 lakhs to Rs. 18,18,624/- after allowing due opportunity of hearing to the assessee but the assessee failed to substantiate that the impugned amounts were incurred wholly and exclusively for the purpose of business of assessee and not for personal purpose or non business purpose, other than the assessee therefore the Id. CIT(A) was right in confirming and enhancing disallowance in the hands of assessee.

5. On careful consideration of above submission, written submission dated 26.04.2023 of assessee and paper book of assessee spread over 178 pages, first of all we note that the assessee has incurred expenditure on marketing and advertisement expenses of Rs. 1,64,10,847/- and the Assessing Officer made disallowance of Rs. 3 lakh out of total advertisement and marketing expenses claimed by the assessee. The assessee carried the issue before Id. CIT(A) in the first appeal and the Id. CIT(A) not only uphold the disallowance of Rs. 3 lakh but also enhance the same to Rs.

18,18,624/- with detailed verification and examination of explanation as well as documentary evidence filed by the assessee. For the sake of completeness of this order we find it appropriate to reproduce the relevant operative part of first appellate order, which read as follows:- para 6.10 to 6.10.8

6.10 As regard payment to Axis Interior Pvt. Ltd. for Rs 59 lacs, the appellant company has furnished necessary details in the form of bills, ledger account, bank statement, photographs etc. to establish that the said payment was made in connection with exhibition held in Dusseldorf, Germany and is a different transaction which was entered into with another group company of Ms Axis Interior Pvt. Ltd for designing services received in respect of new corporate office of the appellant company at Faridabad. No adverse view is attracted on this point.

6.10.1 As regard payment to non-resident amounting to Rs 26,78,272/-, it has been submitted that the same was made to Messe Dusseldorf and Klaus Harren GMBH in Germany towards their services rendered in Dusseldorf K-Show, the exhibition in which the appellant company participated. In the absence of any PE in India and referring to Art 7 of DTAA between India and Germany and correspondence from Klaus Harren GMBH stating that tax is to be paid in Germany and producing Form 15CB for non-deduction of TDS, the appellant has substantiated that TDS was not required to be deducted in respect of these transactions. The appellant's explanation is accepted.

a) Credit Card expenses under the head 'Advertisement & Marketing amounting to Rs 55,42,668/-.

6.10.2 Before me, the assessee submitted that an amount of Rs.55,42,668/- of credit card expenses has been incurred for business purposes, out of which substantial amount of Rs.47,04,118/- has been incurred in foreign countries in the USA, France, Germany, Dubai etc. and balance amount of Rs.8,38,551/- was incurred in India for promoting domestic business. Most of credit card expenses were stated to be incurred in entertaining guests with food and beverages and gifts. The break-up of expenses totaling to Rs 55,42,669/- was filed vide letter dated 10.04.2019.

6.10.3 A perusal of the information contained in the said chart reveals that almost entire expenses abroad has been incurred by JMD who visited various destinations with family. Narration given against all such expenses is same i.e. "Exp. by JMD for customers". It reveals nothing about the specific nature of expenses. The appellant has not even identified the persons for whom such expenses have been incurred rather it has mentioned the name of all the client companies of adjoining countries and locality. For example, for expenses incurred in USA, in the months of May, Oct., Nov., Dec. and January 2013, the names of the customers for whom expenses have been claimed to have been incurred is always the same i.e. same companies of Costa Rica, Argentina and Mexico. Same is the case with respect to 'Expenses by JMD for customers' in other countries.

6.10.4 The assessee did not furnish any details or even the name of the Indian Clients to whom the gifts, parties, lunches etc. were given.

6.10.5 Such information is general and vague and proves nothing. Purchases of branded apparels and luxury items have been made for giving gifts to customers without identifying the person. Huge amount has been claimed to have been incurred on

providing gifts and hospitality to foreign customers without identifying the guests. An analysis of nature of expenses incurred on account of such claimed gifts and hospitality expenses would make it amply clear that these are expenses of personal nature only as these are not items which can be given to an organization or customer but items of personal choice and consumption.

6.10.6 Most of credit card expenses are on account of famous restaurants, recreation and purchase of luxury items such as apparels and shoes etc. of personal choices. A careful perusal of details filed make it amply clear that most of these expenses certainly include expenses incurred on family and personal purchases during foreign trips and purchase of items in India for personal consumption. It was argued that the appellant company has substantial revenue from export and to strengthen its business ties and to explore further business, it has to spend money in entertaining customers and giving them gifts. If that is so, it must be established by leading evidences. It was argued that credit card expenses have both personal and business expenses and the appellant has segregated the two and claimed only those related to business on the basis of its business prudence. However, no such basis was divulged when there is such queer mixing of business and non-business expenses. The appellant must come out with clean hands segregating the two to claim only those expenses which have been incurred wholly and exclusively for business purposes. In the present case, the appellant has no reliable evidences or explanation in respect of such expenses.

6.10.7 The limited information filed is only self-generated without any corroborative proof from independent source. The break-up of expenses totaling to Rs 1,64,10,846/- including credit card expenses has been broadly filed vide letter dated 10.04.2019 and that too only for amount exceeding Rs 40,000/-. For expenses below Rs 40,000/- totaling to Rs 23,97,552/-, no details have been furnished. The said chart shows expenses incurred by JMD for customers and included Rs 7,32,771/- on account of 'gift to international customers and further similar substantial amount of above Rs 14,00,000/- under the heads 'Dinner with customers or International customer' and 'guest house in USA for meeting with international customers' etc. on various dates. The genuineness of these expenses on dinner meeting with customers (Domestic & International) as having been incurred wholly and exclusively for the purpose of business has not been established as it is observed that -

- i) The appellant has not produced supporting bills and vouchers;*
- ii) It has failed to identify the customers for whom such expenditure has been incurred - domestic and abroad;*
- iii) It has failed to identify the expenses incurred through credit card for business purpose segregating the same from personal expenditure and;*
- iv) Perusal of credit card statements show that most of these expenses are purely personal in nature, being items like apparels, electronic items, shoes, sun glasses etc.*

6.10.8 In view of the above, I am of the considered view that 25% of total credit card expenses of Rs 55,42,669/- i.e. Rs 13,85,670/- deserves to be disallowed as the appellant has failed to substantiate that the same has been incurred wholly and exclusively for business purposes. An addition of Rs 13,86,000/- is confirmed on account of such disallowance.

6. At the very outset we note that the Id. CIT(A) accepted the explanation of assessee with regard to payment to nonresident towards their services rendered in Dusseldorf and Klaus, the exhibition held in Germany in which the assessee participated amounting to Rs. 26,78,272/- made to Messe Dusseldorf and Klaus Harren GMBH, Germany. Thereafter the Id. CIT(A) proceeded to evaluate credit card expenses of Rs. 55,42,668/- incurred on account of advertisement and marketing. The Id. CIT(A) categorically noted that the assessee did not furnish any detail or even in the name of Indian clients to whom the gifts, parties, lunches etc. were given. He further noted that the information given by the assessee was vague and proves nothing and purchases of branded apparels and luxury items have been made for giving gifts to customer without identifying the person huge amounts has been incurred on providing gifts and hospitality to foreign customers without identifying the guests which make it clear that these are expenses of personal nature only and as the items purchased were not the items which can be given to an organisation or customer and the same were purchased as per personal choice and consumption. These facts factual finding have not been negated by the Id. counsel of assessee.

7. The Id. CIT(A) disallowed 25% of credit card expenses that is Rs. 13,85,670/- by considering the entire explanation of assessee and by observing that the genuineness of expenses on dinner meeting with domestic and international customer as having been incurred wholly and exclusively for the purpose of business has not been established as the assessee has not produced supporting bills and vouchers, it has failed to establish identity of customer for whom such huge expenditure has been incurred in India & Abroad and also failed to establish identity of the person on whom expenses have been incurred through credit card and the assessee failed to segregate the expenditure for the purpose of business and for personal purpose. Thereafter the Id. CIT(A) concluded that the perusal of the credit card statement shows that most of the expenses were purely personal in nature, being items like apparels, electronic items shoes, sun glasses etc. We are unable to find any fault in the conclusion derived by the Id. CIT(A) in this regard as the Id. counsel of assessee could not substantiate that the expenses incurred by the assessee through credit card was for the purpose of business of assessee and there was no element of personal purpose or non business purpose. Therefore disallowance of Rs. 13,85,670/- being 25% of total claim is quite correct and justified.

8. In the subsequent part of this order the Id. CIT(A) confirm disallowance of Rs. 3,24,000/- by holding that it was incurred for personal purpose and not for business purposes as the assessee did not furnish the guest list and not even furnish the photographs or any other evidences substantiating that the said expenditure was incurred on get together party at factory premises on 31.12.2013 with a view to promote business of assessee. Even before us there is no evidence before us

substantiating the claim of assessee therefore the disallowance made by the Id. CIT(A) does not require any interference.

9. So far as disallowance of Rs. 1,08,954/- is concerned the appellant submitted that the appellant during the year was maintaining a guest house at " the ARALIAS" Gurgaon and the expenses incurred at the club of said guest house used by the guest of appellant company staying in the guest house. On being asked by the Id. first appellate authority the appellant could not furnish any detail on record such as which guests stayed at the guest house and what business was being conducted with them. The Id. CIT(A) also went to observe that no correspondence/email etc. were furnished on record to substantiate the guest house and club facilities/services were being offered to customers wholly and exclusively for the purpose of business. In absence of said details the Id. CIT(A) dismissed the explanation of assessee and made disallowance of Rs. 1,08,954/- alleging the same as incurred for non-business purposes. It is a well settled principle of tax jurisprudence that the person that who makes a claim is also under obligation to substantiate the same failing which the tax authorities are validly entitled to make disallowances or additions as the case may be. In the present case the assessee has submitted has reiterated the submission which were made before the Id. CIT(A) has also submitted voluminous paper book but has failed to controvert or demolish observations and comments of the Id. CIT(A) enhancing the addition. Therefore we are unable to see any valid reason to interfere with the findings arrived by the Id. CIT(A) and hence we uphold the same.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 27.06.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER
Dated: 27th June, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

NV/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi