

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 5337/Del/2017, A.Y. 2014-15

DCIT, Circle-10(1), New Delhi	Vs.	M/s. Glaze Trading India Pvt. Ltd. (a)A-1/24,Second Floor,Main Najafgarh Road, Janakpuri, New Delhi (b) C/o RRa Tax India D-28, South Extension, Part-1, New Delhi PAN : AACCG1013A
Appellant		Respondent

Assessee by	Dr. Rakesh Gupta, Adv & Shri Somil Agarwal, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	03.10.2023
Date of Pronouncement:	09.10.2023

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Revenue against the order dated 02.06.2017 of Commissioner of Income Tax (Appeals)-4, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 213/16-17/CIT(A)-4, New Delhi arising out of an appeal before it against the order dated 31.03.2016 passed u/s 143(3) of the Income Tax Act,

1961 (hereinafter referred as 'the Act') by the DCIT, Circle 10(1), New Delhi (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that the assessee is a company engaged in the business of trading of FMCG (Fast Moving Consumer Goods) and home appliances, Organic Khad which is based on the chain of agents/ distributors engaged in sales almost all over India. Assessee filed return of income which was selected for scrutiny and ld. AO had made certain disallowances.

2.1 First disallowance was of business promotion expenses of the nature which assessee had claimed were necessary due to the nature of business. Ld. AO was not satisfied with the details furnished with regard to the distributors to whom the gifts and incentives were given and Ld. AO considered the expenditures were not wholly and exclusively for the purpose of business and that disallowance of expenses under this head has also been made in the previous years also. Accordingly, disallowance of 25% of business promotion expenses of Rs. 6,75,63,728/- for the year under consideration at Rs. 1,68,90,932/- was made.

2.2 Ld. AO has made disallowance of Rs. 3,00,000/- on account of package expenses which ld. AO considered were not supported by proper vouchers.

2.3 Ld. AO also made disallowance of Rs. 1,91,846/- on account of office expenses, again on the basis of non-production of its vouchers.

3. Ld. CIT(A) has deleted these additions on the basis of findings in A.Y. 2013-14 and the Revenue is in appeal raising following grounds :-

"1. Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in treating the addition of Rs. 1,68,90,932/- made by the AO on account of disallowance of business promotion as eligible expenses under section 37 of the Act and subsequently deleting the same.

2. *Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in treating the addition of Rs. 3,00,000/- made by the AO on account of disallowance of packing expenses as eligible expenses under section 37 of the Act and subsequently deleting the same.*

3. *Whether on the facts, and circumstances of the case & in law, the Ld. CIT (A) has erred in treating the addition of Rs. 1,91,846/- made by the AO on account of disallowance of office expenses as eligible expenses under section 37 of the Act and subsequently deleting the same.*

4. *The appellant craves leave,,to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

4. Heard and perused the record.

5. Ld. DR has submitted that Ld. CIT(A) has failed to appreciate the factual discussion of the issue while Ld. AR submitted that the disallowances were rightly deleted firstly; for the reason that there were consistently being claimed and in assessment year 2018-19 the assessment order passed u/s 143(3) does not make any addition in that regard. Further taking Bench through the submissions made before Ld. Tax Authorities, Ld. AR submitted that all the relevant evidences were before Ld. AO, however, he failed to take into consideration the same. Lastly, he submitted that disallowance on adhoc basis is not justified for which he relied the judgments of hon'ble Supreme Court of India in the case of ***Pr. CIT vs. R.G.Buildwell Engineers Ltd. (2018) 99 taxmann.com 283 (Del).***

6. After taking into consideration the matter on record and the submissions, the ground wise findings are as follows :

7. **Ground no. 1 :-** In regard to this ground it can be observed that the issue with regard to business promotion expenses has been dealt in A.Y. 2013-14 by Ld. CIT(A) and it will be appropriate to reproduce the relevant findings in para 4. here below;

“4. The ground no. 1 is general in nature and ground no.2 is not pressed. The Ground no. 3 & 4 are against the disallowance of Rs 1,39,63,078/- out of business promotion expenses. I have considered the observations made by the AO in the impugned assessment order as well as the written submissions made by the appellant before me. I have also considered the case laws referred by the AO in the impugned assessment order as well as the case laws as relied upon by the appellant in the written submissions filed. I find that it is not disputed by the AO that the books of accounts were not produced by the appellant during the course of assessment proceedings. This fact also cannot be over looked that the books of the appellant assessee were audited by the statutory auditors and there is no adverse observations of the statutory auditors. Assessee Company is engaged in the business of trading of FMCG (Fast Moving Consumer Goods) and home appliances. This business is being run by the assessee company through a chain of about 12000 agents and distributors spread over almost all over India who work as a pyramid. Ld. AR explained that this is unique business model where each of the persons in the chain has to be pampered and patronized so that his all out efforts are channelized for the expansion of the business of the assessee company. The persons so engaged in the multi level marketing business pattern of assessee are remunerated by way of payment of commission on sales made by them. Ld.AR explained that in fact these persons advertise the goods of the assessee company and promote the sales of the assessee and are remunerated by way of incentives and commissions. Such incentives given to these agents are the expenses claimed by the assessee as business promotion expenses. I find from the impugned assessment order the AO mentioned that in the list provided of the distributors in some of the cases complete addresses were not given. However, the AO has failed to bring out on record as to how many cases were as such where no address was provided by the assessee to the AO. I find from the chart incorporated by the AO of the turnover and the expenses claimed by the assessee on business promotion, that for the assessment year under consideration turnover of the appellant assessee company increased from 27.91 crores in AY 2011-12 to Rs. 169.57 crores in AY 13-14 which is about 6 times, whereas the corresponding increase in expenses is 4.65 times. Thus, the expenses claimed have not increased in proportion to the increase in turnover and on the same side it cannot be brushed aside the nature of business carried out by the appellant requires expenditure on business promotion to promote its business. The AO disallowed 25% of the expenses claimed without bringing on record any specific name of any of the party in respect of whom any such distribution of expense is claimed, and any of such party would have denied to have received any such gift from the assessee company. Merely

because in some of the cases as stated by the AO some complete details of that agent could not be provided cannot be a reasons to make a disallowance of 25% of the expenses claimed by the assessee on Business promotion expenses, when such expenses have not been considered as not to have been incurred for the business of the assessee company.

I have examined the case laws referred to by the AO in the impugned assessment order and find that the facts of those cases are different from the case of the appellant. In the case of M/s. Goodlas Nerolac Paints Limited, the said company claimed expenses on account of secret commission paid and no details were furnished by the assessee whereas in the case of the appellant, it is not a case where some secret commission is claimed to paid by the assessee, or not even a case where assessee has not furnished the complete details of the parties to whom such gifts were distributed by the assessee company. The AO stated that in some of the cases assessee failed to furnish compete detailed, however, he did not mention in how many cases no such details were filed by the assessee. No details are given by the AO in the impugned assessment order while making the adhoc disallowance of 25% of the Business promotion expenses. Therefore, the said case law cannot be compared with the case of the appellant assessee. The ratio of judgment in the case of Assam Pesticides & Agro Chemicals Vs. CIT (Gau) also does not apply to the case of the appellant assessee, as in that case the said company claimed deduction in respect of discount paid to its sister concern on the basis of agreement between them. In the case of M/s. Jaipur Electro Pvt. Limited Vs. CIT (Raj) 134 CTR 237, AO gave a clear finding after discussing each case that payments were not made out of any business expediency and expenditure incurred was not laid out wholly and exclusively for assessee's business. However, in present appeal before me, the AO has not mentioned even a single instance pointing out any name of any party to whom assessee claimed to have given the gift and that party has not contributed to the business pyramid of the assessee company. Therefore, ratio of this judgment also does not apply to the case of the appellant. I find that facts of the assessee's case are not similar to the ratio of the judgments referred to by the AO in the impugned assessment order and therefore, the same cannot be applied to the case of the appellant. I have also examined the other case laws relied upon by the AO, but find that those case laws also do not apply to the case of the appellant.

I find that appellant company furnished a detailed list of distributors to whom gift items have been distributed and also furnished the comparative chart of turnover and expenses incurred on business promotion. The AO has also categorically stated in the impugned assessment order that assessee filed details of the expenses claimed

stated to have been incurred. I find that the expenditure claimed by the appellant as business promotion expenses and the items claimed to be distributed by the assessee for which the details has been furnished by the assessee, was only for the purpose of business expediency and promotion of the business of the assessee in the nature of business carried out by the assessee, expenditure incurred on such promotional gifts cannot be considered other than for business needs of such companies until and unless some specific instance is brought on record by the assessee. In fact the disallowance has to be made on some material and it cannot be arbitrary. The AO failed to bring on record that assessee has claimed the excess expenditure as compared to earlier years when the sales of the year are considered. In the absence of any specific contrary evidences brought on record, I do not find any reason to make any disallowance of the expenses and that too in an adhoc manner. From the details placed on record by the appellant, I find that for the assessment year under consideration

the net profit has been shown by the appellant which is almost 10% as compared to immediate preceding year where the net profit was shown by the assessee at 5%. Thus, even it cannot be a case of the AO that by claiming the expenditure assessee has reduced its profits. In the immediate preceding year assessee has declared net profit of Rs. 603.61 lakhs, whereas in the impugned assessment year net profit has been declared by the assessee is Rs. 1601.14 lakhs, which shows an increase of approx. 10 crores for the year under consideration.

The appellant has relied upon the following case laws :-

- *Commissioner of Income-tax v. C.B.K.R. Enterprises [2010] 186 Taxman 14 (Delhi)(HC);*
- *Commissioner of Income-tax -VI v. Tupperware India (P.) Ltd. [2015] 53 taxmann.com 232 (Delhi)(HC);*
- *Peari Farben Chem Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax- 9(2), ITAT Mumbai, Bench 'C';*
- *Hughes Escorts Communications Limited Vs. Joint Commissioner of income Tax, ITAT, Delhi Bench 'C'*

Respectfully following the decisions of the Hon'ble ITAT and Hon'ble Delhi High Court as discussed above and in view of my above observations the addition made by the AO of Rs. 1,39,63,078/- is hereby deleted. These grounds of appeal are decided in favour of the appellant."

8. After taking into consideration the aforesaid, the bench is of considered view that Ld. CIT(A) has extensively dealt with the issue on the basis of nature

of business of the assessee. The whole model of the business of assessee is dependent upon the agents or distributors who are given incentives and there is a business expediency with promotion of the business of assessee due to these expenditures as in A.Y. 2013-14 so in the present assessment year also, as assessee had brought on record the effect of business promotion expenses in the increase of the turn over and net profit. It will be appropriate to reproduce the same as provided to ld. AO and as available on page no. 95 of the paper book as below :

“5. The company is giving gifts as business promotion to increase its turnover which result in increase in profit. However during the year business promotion effect has come in next assessment year. This can be confirm from the following facts.

<i>Asstt. Year</i>	<i>Turnover (In Crores)</i>	<i>Net Profit (In Crores)</i>	<i>Business Promotion / IR Expenses (In Crores)</i>
<i>2015-16-</i>	<i>341.10</i>	<i>43.43</i>	<i>4.57 —</i>
<i>2014-15</i>	<i>162.30</i>	<i>15.34</i>	<i>6.75</i>
<i>2013-14</i>	<i>169.57</i>	<i>16.01</i>	<i>5.58</i>
<i>2012-13</i>	<i>121.94</i>	<i>6.03</i>	<i>4.11 .</i>

The details of the item distributed as business promotion and list of the person to whom such items has been given are produced.”

9. Ld. AR during the course of arguments has demonstrated that all the relevant details of the business promotion expenditure including a list of persons to whom such items has been given was produced. He also demonstrated that the area of interest of assessee company being FMCG distribution/ advertisement expenses form substantial part of the expenditure for which the comparative detail with other company was also filed. Thus, we are not inclined to interfere in the decision of Ld. CIT(A) in following his findings in assessee’s own case for A.Y. 2013-14. The ground is dismissed.

10. **Ground no 2 and 3;** It comes up that primarily the expenditures have been doubted for lack of supporting vouchers. In regard to which in assessee’s own case Ld. CIT(A) in A.Y. 2013-14 observed in para no. 5 as follows :

“5. The ground no. 5 is directed against the action of the AO in

making disallowance of Rs. 5,00,000/- on account of packing expenditure on estimate basis. The AO made the above disallowance as he found that some small petty expenses debited under the packing expenses were supported only with some self generated vouchers which were paid in cash and these could not be explained satisfactorily by the AR. who appeared during the assessment proceedings. AO further added in his order that the assessee could not substantiate the expenses incurred on account of miscellaneous and general expenses with supporting bills and vouchers. Accordingly he" disallowed an amount of Rs. 5,00,000/-.

I have considered the observations made by the AO in the impugned assessment order as well as the submissions made by the appellant before me during the course of appellate proceedings, I find that while making the above disallowance the AO has not given any details of any such expenses as to which expenses were found by him unsupported with bills and vouchers. In the start of his observations, the AO has discussed about the packing expenses, and then the AO spoke about the Misc. and general expenses. This fact is not controverted that audited books of accounts with bills and vouchers were produced before the AO during the course of assessment proceedings. In case there was any doubt to the AO about any of the bill or vouchers for any of the expense, AO was required to specifically ask the assessee about such expenses. However, no such specific details of any such expenses forms part of the impugned assessment order. I do not agree with the AO that because some vouchers were self made as such disallowance is to be made. In the business carried out by any business man, many times self made vouchers are prepared to account for the expenses incurred, since no regular bills can be procured by any business man while incurring these expenses by the management and even by the employees of the business man. Such expenses may be on conveyance, purchase of milk, purchase of small petty items from nearby small shopkeepers so on and so forth. Therefore, merely because the AO found that some vouchers are self made or are paid in cash cannot be a reason to make any such addition and that too in an adhoc manner. As the AO failed to specify any such expenses, I do not find any reason to sustain the addition made in an adhoc manner. Therefore, the adhoc addition made of Rs. 5,00,000/- is hereby deleted. This ground of appeal is allowed in favour of the assessee."

11. At the cost of repetition the Bench can observe that the nature of business activity of the assessee was such which required extensive involvement of individuals and on that account certain expenditures if made on the support of self drawn vouchers, the same cannot be doubted when otherwise there is no defect in the books and the business turnover. Ld. CIT(A) has been reasonable to hold that such adhoc disallowances are not justified and the findings require no interference. The grounds are decided against the revenue.

12. **Consequently, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 09 October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-09.10.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**