

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 2108/Mum/2023 (A.Y.2011-12)**

**ACIT – 15(3) (1),**

R. No. 218, 2<sup>nd</sup> floor,

Aayakar Bhavan,

M. K. Road

Mumbai-400 020

..... Appellant

Vs.

**M/s Pizzeria Pure Foods Restaurant India Pvt. Ltd,**

702, A Wing, 7<sup>th</sup> floor,

Prism Tower, Mindspace,

Link Road, Goregaon (west),

Mumbai-400 062

PAN – AAACP9511C

..... Respondent

Appellant by : Shri H. M. Bhatt, Ld. DR

Respondent by : Ms. Aarti Sathe & Ms. Aasavari Kadam, AR

Date of hearing : 21/09/2023

Date of pronouncement : 22/09/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by revenue is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 13.04.2023 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2011-12. The revenue has raised the following grounds of appeal:-

*On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:*

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 3,38,23,453/- being 25% of the expenses claimed of Rs. 13,52,93,813/- without considering the fact that the assessee has not filed requisite details including bills for expenses, and key documentary evidences, in support of genuineness of transactions which were specifically called for during the course of assessment proceedings even though ample opportunities were given."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs.3,38,23,453/- being 25% of the expenses claimed of Rs.13,52,93,813/- despite the fact that the AO in his Remand Report rejected the acceptance of additional evidence and clearly mentioned that the addition was made for want of evidences, and that the assessee only submitted the breakup of expenses without any evidence/ledger extracts in support of its claims during the course of assessment proceedings."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs. 3,38,23,453/- being 25% of the expensed claimed of Rs. 13,52,93,813/- by accepting additional evidence submitted by the assessee during appellate proceedings stating that the case is covered by clause (a) of sub rule 1 of Rule 46A i.e. the AO did not admit evidence which ought to have been admitted, while undisputedly the addition was made by the AO for want of evidences."*

4. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the disallowance of Rs. 3,38,23,453/- being 25% of the expensed claimed of Rs. 13,52,93,813/- by not appreciating the findings of the AO submitted through the remand report that in the present proceedings (say remand proceedings) also the assessee has only furnished summary with part details without producing the ledger extracts of each of the parties for the quantum of expenditure claimed in the year under consideration. In the absence of complete evidences the disallowance of expenses to the extent of 25% made by the AO was justified and ought to have been confirmed by the Ld. CIT (A)."*

*The appellant prays that the order of the Ld.CIT (A) be set aside and the order of the AO be restored.*

*The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.*

2. The brief facts of the case are that assessee company filed its return of income on 26.09.2011, declaring total income at Rs. 2,54,80,624/-. Assessee filed revised return also to take credit of Self-Assessment Taxes paid. Case of the assessee was selected for compulsory scrutiny. During assessment proceedings, assessee was asked to submit necessary copies of expenses claimed under various heads. Assessee submitted details of T.D.S. acknowledgement, section, party code, Name & PAN No. etc. But bills were not produced and AO disallowed 25% of the total expenses claimed (Rs. 13, 52, 93,813/- under the head cost of Sales, Administration & Establishment Expenses and Selling & Distribution Expenses) amounting to Rs. 3, 38, 23,453/-.

3. Assessee being aggrieved with this order, preferred an appeal before the Ld. CIT (A), who in turn allowed the appeal of the assessee and deleted the disallowances made by the AO. Now, revenue being aggrieved with the same preferred the present appeal before us. We have gone through the order of AO, Order of Ld. CIT (A) submissions of the assessee. Assessee has acquired the franchise of running Pizza Hut Restaurants. Accordingly, the assessee company is engaged in running pizza hut restaurants. Assessee Company has to incur various expenses such as raw materials required for making pizzas, food and beverages etc. Apart from the above the assessee also incurs expenses on salaries, administration and selling overheads etc.

4. Looking at the business model of the assessee, it can be understood that assessee is in the business of running restaurants which sell food items, hence voluminous amounts of bills and vouchers for the expenses will be there. We have gone through the submissions of assessee made before the Ld. CIT (A) also wherein, assessee submitted complete data and information pertaining to the expenses claimed. These submissions of the assessee were taken as additional evidence under rule 46A of the Income Tax Rules, 1962 and report of the AO is also taken into consideration by Ld. CIT (A) and assessee also filed its rejoinder in response to the report of AO.

5. We have gone through the submissions of assessee before Ld. CIT (A) as under alongwith findings of the Ld. CIT (A):-

3. Expenditure claimed under head 'Cost of Sales - Rs.7,25,85,350/-'

4.4.1 In the course of proceedings the assessee submitted the break-up of claim of the aforesaid expenditure with certain supporting documents, which are dealt as under:

S. N.	Nature of Expenditure	Amount (Rs.)	Remarks on supporting documents
1	Raw material consumed	4,39,46,723	<p>Vide submission dated 12-02-2020 the assessee simply furnished the copies of details filed at the time of assessment proceedings, which the then AO has already considered and taken a view on the same. Therefore, the same details have not been considered here again as they have already been considered by the then AO while finalization of the assessment, Therefore, the issue is being decided based on the details as submitted before CIT(A) and further new submission made in the office of the undersigned.</p> <p>Vide submission dated 19-02-2020 received in this office on 20-02-2020, in relation to claim of raw material consumed the assessee furnished the copies of tax invoices issued by Shriram Distribution Services Pvt. Ltd., Pune for purchase of raw-material alongwith purchase vouchers. Similarly, the assessee furnished copies of retail invoices / cash invoice with purchase voucher in respect of purchases from Zen Engineering Pvt. Ltd., M/s. D.K. Sales Corporation and M/s. Kitchen</p>

			<p><i>Solution. On examination of the said details the expenditure claimed in the name of the aforesaid parties appears to be genuine. It is important to mention here that in the submission the total expenditure claimed is of Rs.4,39,46,723/-, however, the assessee has not furnished the entire ledger extracts of each of the parties and the supporting bills. Therefore, the expenditure claimed in the name of the aforesaid parties may be allowed and in respect of rest of the parties the same remains unverifiable. Therefore, it is requested to decide the issue as per law.</i></p>
2.	Royalty	1,31,64,340	<p><i>For royalty payment the assessee has furnished the copy of Agreement entered with M/s. Yum Restaurants India Pvt. Ltd. After considering the royalty agreement, details of TDS deducted and TDS certificate the expenditure claimed appears to be correct. However, the issue may be decided as per law.</i></p>
3	Power & Fuel	1,39,15,732	<p><i>In support the said expenses the assessee has furnished the invoices and journal voucher of the parties namely Supreme Automobiles, Sure Petroleum, The Natural Gas Co. Pvt. Ltd. On examination of the details the expenditure claimed under Power and Fuel in the name of the aforesaid parties appears to be correct. Since no ledger extracts in respect of total expenditure incurred in each of the party has not been filed, the entire claim of expenditure of Rs. 1,39,15,732/- is not verifiable. Therefore, the issue may be decided as per law after obtaining the total amount of expenditure in each of the parties. If</i></p>

			<i>the assessee has claimed expenditure other than any parties the same may not be allowable as the assessee has not furnished any evidences in support of its claim. It is therefore requested to decide the issue as per law.</i>
4	Material handling & Storage charges	2,49,831	<i>The assessee has clubbed these expenditures under Raw material consumed with parties namely Zen Engineering Pvt. Ltd., M/s. D.K. Sales Corporation and M/s. Kitchen Solution. On examination of the said details the expenditure claimed in the name of the aforesaid parties appears to be genuine. Therefore, the expenditure claimed in the name of the aforesaid parties may be allowed and in respect of rest of the parties the same remains unverifiable. Therefore, it is requested to decide the issue as per law.</i>
Total		7,25,85,380	

4.5 Expenditure claimed under head 'Administration and Establishment Expenses - Rs.4,23.38,899/-\*

4.5.1 In the course of proceedings the assessee submitted the break-up of claim of the aforesaid expenditure with certain supporting documents, which are dealt as under:

S. N.	Nature of Expenditure	Amount (Rs.)	Remarks on supporting documents
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1	Clearing Material charges	22,24,304	<p><i>In respect of claim of the said expenses the assessee has not furnished any details except the break-up of aforesaid expenditure included under the head 'Administration &amp; Establishment Expenses'. Since no details in support of the same have been filed, the same cannot be verifiable. Therefore, it is requested to decide the issue as per law.</i></p>
	Insurance	2,94,236	
	Rates & Taxes	10,82,859	
	Repairs & Maintenance Building ** 1	13,00,350	
	Bank and Other charges	37,085	
	Electricity Charges - Office	1,11,260	
	Miscellaneous expenses	3,20,551	
2	Repairs & Maintenance Others	16,78,270	<p><i>In support of said expenditure the assessee has furnished copies of bills, purchase vouchers in respect of parties namely Rims Welding Works, S D Sanap, Ravindra Electricals, Kirit Hardware, Rathsons Traders Pvt. Ltd. On examination of the bills; it appears the expenditure claimed in the name of the aforesaid parties appears to be correct. Since no ledgers have been filed in respect of aforesaid parties, the quantum of allowable expenditure cannot be worked out. Also in respect of other parties, no details have been filed. Therefore, the issue may be decided as per law.</i></p>
3	Repairs &	15,56,860	<p><i>In support of said expenditure the assessee has furnished copies of bills, pchase vouchers</i></p>

	Maintenance Plant & Machinery		<p>in respect of parties namely Shiv Elevators, M K Sales, Green Power Solution, Jeavanur - Electricals, Metalab.</p> <p>On examination of the bills, it appears the expenditure claimed in the name of the aforesaid parties appears to be correct. Since no ledgers have been filed in respect of aforesaid parties, the quantum of allowable expenditure cannot be worked out. Also in respect of other parties, no details have been filed. Therefore, the issue may be decided as per law</p>																
4	Rent	2,57,54,448	<p>The assessee has furnished the copies of relation to rent paid to the following producing the copies of rent agreements.</p> <table border="1" data-bbox="857 848 1393 1549"> <tr> <td>Ramesh Builders</td> <td>3240954</td> </tr> <tr> <td>Ramesh Thakkar</td> <td>2690100</td> </tr> <tr> <td>SGS Agencies Ltd.</td> <td>2745600</td> </tr> <tr> <td>Shyam Rajore</td> <td>1489410</td> </tr> <tr> <td>Shyam Bansilal Rajore</td> <td>744705</td> </tr> <tr> <td>Soham Enclaves Pvt. Ltd.</td> <td>3822689</td> </tr> <tr> <td>Sumar Yusaf Kumbhar</td> <td>960000</td> </tr> <tr> <td><b>Total</b></td> <td><b>15693458</b></td> </tr> </table> <p>Since the assessee has deducted the TDS while making the aforesaid rent payments, the expenditure appears to be correct. It is therefore requested to decide the issue as per law.</p>	Ramesh Builders	3240954	Ramesh Thakkar	2690100	SGS Agencies Ltd.	2745600	Shyam Rajore	1489410	Shyam Bansilal Rajore	744705	Soham Enclaves Pvt. Ltd.	3822689	Sumar Yusaf Kumbhar	960000	<b>Total</b>	<b>15693458</b>
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Soham Enclaves Pvt. Ltd.	3822689																		
Sumar Yusaf Kumbhar	960000																		
<b>Total</b>	<b>15693458</b>																		

5	Professional and consultancy charges / audit fees/ other professional charges	-	The assessee has furnished the copies of bills / purchases vouchers / TDS certificate in relation to professional expenses paid to the following parties.

			VS Kudche & Company	24266	
			Shailesh V Panshikar	8500	
			GM Kapadia & Company	16545	
			Bob Associates	198540	
			GM Kapadia & Company	1230397	
			VS Kudche & Company	291192	
			Veda Corporate Advisors Pvt. Ltd.	126884	
			Veda Corporate Advisors Pvt.	43182	

			<i>ltd.</i>	
			<i>Wadia Ghandy &amp; Company</i>	<i>1127694</i>
			<i>Total</i>	<i>30,67,200</i>
			<i>Since the assessee has deducted the TDS while making the aforesaid payments, the expenditure appears to be correct. It is therefore requested to decide the issue as per law.</i>	
<i>6</i>	<i>Communication Expenses v *</i>	<i>14,38,708</i>	<i>In respect of communication expenses the assessee has furnished the copies of bills, purchase vouchers in respect of bills issued by Airtel, Tata Indicom. No separate ledgers have been furnished except sample bills totaling to Rs.21,985/-. In absence of complete details the entire claim cannot be verifiable, however, the issue may be decided as per law.</i>	
<i>7</i>	<i>Printing Stationery &amp;</i>	<i>5,57,691</i>	<i>In respect of printing expenses the assessee has furnished the copies of tax invoices, purchase vouchers in respect of bills issued by Rajesh Trading Company, Sangat Printers Pvt. Ltd., Goldamount Peripherals, No separate ledgers have been furnished except sample bills totaling to Rs. 16,977/-. In absence of complete details the entire claim cannot be verifiable, however, the issue may be decided as per law.</i>	
<i>8</i>	<i>Travelling &amp; Conveyance expenses'</i>	<i>9,14,164</i>	<i>In respect of Travelling expenses the assessee has furnished the copies of bills, purchase vouchers in respect of bills issued by Komal Agencies, Shah Bector &amp; Sons. No separate ledgers have been furnished except sample bills</i>	

			<i>totaling to Rs.1,14,931/-. In absence of complete details the entire claim cannot be verifiable, however, the issue may be decided as per law.</i>
9	Security Charges	12,58,284	<i>In respect of security charges the assessee has furnished copy of bill for Rs. 1,04,774/- with copy of purchase voucher. No separate ledger has been furnished.. In absence of complete details the entire claim cannot be verifiable, however, the issue may be decided as per law.</i>

4.6 Expenditure claimed under head *Call Centre and Distribution Expenses - Rs.2,03,69,534/-\**

4.6.1 In the course of proceedings the assessee submitted the break-up of claim of the aforesaid expenditure with certain supporting documents which are dealt as under.

S. N.	Nature of Expenditure	Amount (Rs.)	Remarks on supporting documents
1	Call Centre Charges >	20,05,497	<i>In respect of call centre charges the assessee has furnished copies of invoice issued by Caretel Infotech Ltd., amounting to Rs.492893/- alongwith copy of purchase voucher. No separate ledger has been furnished. In absence of complete details the entire claim cannot be verifiable, however, the issue may be decided as per law.</i>
2	Advertisement & Marketing expenses	1,15,53,106	<i>In respect of Advertisement &amp; Marketing expenses the assessee has furnished copies of TDS certificate in respect of payment made to M/s. Yum Restaurants Marketing Pvt. Ltd.,</i>

			of Rs.38,30,725/- alongwith copy of purchase voucher. Also copy of bill issued by M/s. Aakar Ads for Rs.65,000/-.. No separate ledger has been furnished. In absence of complete details, the entire claim cannot be verifiable, however, the issue may be decided as per law.
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3	Packing material	38,30,725	In respect of these expenses the assessee has not furnished
	consumed		any details and hence the same cannot be verifiable. The
	Fuel and Delivery Scooter expenses	10,59,608	issue may be decided as per law
	Other marketing and sales promotion expenses	19,20,571	

1. In view of the above, it is to state that the assessee in the submission has furnished the summary / break-up of expenses included in the profit and loss account on which the AO has made disallowance of 25% of such expenses for want of evidences. In the present proceedings also the assessee has furnished summary with part details alongwith supporting documents without producing the ledger exacts of each of the parties the quantum of expenditure claimed in the year under consideration. In absence of any evidences the same cannot be verifiable fully. Also the assessee in the submission has reiterated its stand in respect of submission made in assessment proceedings, however, the same has not been addressed at this juncture as after considering such submission the then AO has come to the conclusion for disallowance of 25% expenses. Therefore, the issues may be decided as per law.
2. Submitted for kind consideration and further directions please.

5.4

The appellant company has filed the rejoinder to Remand Report vide letter

With reference to the captioned subject, we submit as under:-

#### Background

The Company is engaged in the business of Quick Service Restaurants. The company is principally engaged in the franchisee business of Pizza Hut Restaurants. The Company filed its Return of Income ('ROI') for the captioned year on 26 September 2011 declaring a total income of Rs. 2,54,80,624/- and tax liability along with interest of Rs. 53,08,546/-.

#### Assessment Proceedings

The Company's case was selected for scrutiny. During the course of assessment proceedings, the Company was asked to submit the details of all expenses along with the bills for the same.

In response to the notice u/s 142(2), the Company filed various submissions from time to time wherein party wise details of expenses were submitted along with the sample copies of invoices and details of tax deducted thereon. Also, the details of TDS deduction and details of TDS return filed for the concerned period were submitted.

Further to our submission, it was explained that the Company is engaged in running various pizza hut restaurants. Accordingly, the Company have voluminous amount of bills, vouchers and records against the expenses incurred during the course of running the business. It was required by the Company to ask for the specific vouchers, bills so that the submission would be done on faster basis.

However, the Company's contention was not considered and the Assessing Officer disallowed the 25% of the expenses disclosed under the head cost of Sales, Administration and Establishment expenses and Selling and Distribution expenses in the profit and loss account for the subject AY on adhoc basis. The learned AO has alleged that the expenses claimed by the Company are certainly unreasonable and on higher side, accordingly it is reasonable to disallow 25% of the said expenses for the subject

AY.

Sr. No.	Particulars of Expenses debited to Profit and Loss Account	Amount Claimed in Profit and Loss Account	Disallowance @ 25 %
1.	Cost of Sales	Rs. 7,25,85,380	Rs. 1,81,46,345
2	Administration & Establishment Expenses	Rs. 4,23,38,899	Rs. 1,05,84,725
3	Selling & Distribution	Rs. 2,03,69,534	Rs. 50,92,384

	Expenses		
	Total	Rs. 13,52,93,813	Rs. 3,38,23,454

Accordingly, the assessment order under section 143(3) of the Act dated 14.03.2014 was passed assessing income at Rs. 5,93,04,080/- and tax demand along with interest of Rs. 1,56,03,810/- was raised.

*Request for remand back of proceedings with Honorable CIT (A)*

In view to above assessment order under section 143(3) wherein, the requirements were asked to submit on the eleventh hour of the assessment, we were not able to produce the records available with us due to lack of time given to produce and also due to voluminous in nature.

Thus request was made to good self to and remand back the case for fresh checking of the bills, vouchers, records etc. The request was accepted by Honorable CIT (A) and the matter was remanded back to AO.

*Submission of details to Assessing Officer for Remand Report*

Post discussion and hearings with learned Assessing Officer, following submissions were made:

1. 29 November 2019;
2. 12 February 2020 &
3. 20 February 2020.

Further, without giving reasonable opportunity the Learned Assessing Officer passed the Remand report dated 24 February 2020.

*Reply to point no. 3.1 of remand report - Additional evidence*

During the course of assessment proceedings, the company was asked to submit the details of all expenses along with the bills of the same.

The company submitted the details through following submissions dated (copy of submission enclosed): -

1. 28 January 2014;
2. 13 February 2014;
3. 26 February 2014 &
4. 14 March 2014.

Further to our submission, it was explained that the company is engaged in running various pizza hut restaurants. Accordingly, company have voluminous amount of bills, vouchers and records against the expenses incurred during the course of running the business. It was required by the company to ask for the specific vouchers, bills so that the submission would be done on faster basis. Considering the request the Honorable CIT (A) remanded the case to Learned Assessing Officer.

Therefore, the additional evidence submitted by the company is within the purview of Rule 46A of the Income Tax Rules 1962.

Reply to point no. 4.4 of remand report

The Company had submitted various details in form of different Invoices post discussion with learned Assessing Officer via submission dated.

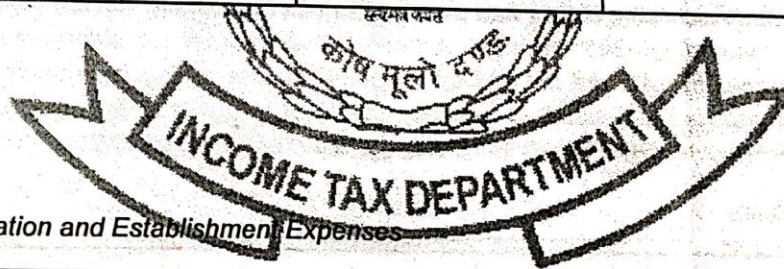
1. 29 November 2019;
2. 12 February 2020 &
3. 20 February 2020.

The learned Assessing Officer had asked to submit the sample invoice copies and not the entire invoices, accordingly the Company submitted the invoices via submission dated 20 February 2020. Further the AO did not ask for ledger abstracts during the course of proceedings and therefore was not submitted. We hereby submit the replies to the observations raised by the learned Assessing Officer in Remand Report dated 24 February 2020: -

Cost of Sales

Sr. No.	Nature of Expenditure	Amount (Rs.)	Assessing Officer View	Reply to Assessing Officer's view
1	Raw Material Consumed	4,39,46,723	The Company has not furnished the entire ledger extracts of each of the parties and supporting bills.	No opportunity given by AO to submit the Ledger Abstract. Please find enclosed the details of Raw Material Consumed along with Ledger Abstracts. (Refer Annexure 1).
2	Royalty	1,31,64,340	The details submitted is correct.	No additional details submitted.

3	Power & Fuel	1,39,15,732	The Company has not furnished the ledger extracts, therefore the entire expenses are not verifiable.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the details of Power & Fuel along with Ledger Abstracts. (Refer Annexure 2).
4	Material handling & storage charges	2,49,831	The Company has not furnished the entire ledger extracts of each of the parties and supporting bills.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the details of Material handling & storage charges along with Ledger Abstracts. (Refer Annexure 3)
5	Stores/Small wares	13,08,754	The Company has not furnished the entire ledger extracts of each of the parties and supporting bills.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the details of Stores/Small wares along with Ledger Abstracts. (Refer Annexure 4)
	Total	7,25,85,380		



Sr. No.	Nature of Expenditure	Amount (Rs.)	Assessing Officer View	Reply to Assessing Officer's view
1	Clearing Material charges	22,24,304	The assessee has not furnished any details except the breakup of aforesaid expenditure.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstracts - Refer Annexure 5 (Soft copy)
	Insurance	2,94,236		

	<i>Rates &amp; Taxes</i>	<i>10,82,859</i>		
	<i>Repairs and Maintenance Building</i>	<i>13,00,350</i>		
	<i>Bank and Other charges</i>	<i>37,085</i>		
	<i>Electricity Charges Others</i>	<i>1,11,260</i>		
	<i>Miscellaneous Expenses</i>	<i>3,20,551</i>		
<i>2</i>	<i>Repairs &amp; Maintenance Others</i>	<i>16,78,270</i>	<i>The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.</i>	<i>No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 6 (Softy copy)</i>
<i>3</i>	<i>Repairs &amp; Maintenance Plant &amp; Machinery</i>	<i>15,56,860</i>	<i>The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.</i>	<i>No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 7 (Soft copy)</i>
<i>4</i>	<i>Rent</i>	<i>2,57,54,448</i>	<i>The assessee has furnished copies of TDS Certificates issued to Land Lord without producing the copies of rent agreements.</i>	<i>No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 8 (Soft copy)</i>
<i>5</i>	<i>Professional and Consultancy charges/Audit Fees/Other</i>	<i>38,09,829</i>	<i>The details submitted is correct.</i>	<i>No additional details submitted.</i>

	Professional Charges			
6	Communication expenses	14,38,703	The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 9 (Soft copy).
7	Printing Stationery &	5,57,691	The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 10 (Soft copy)
8	Travelling Conveyance expenses &	9,14,164	The invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the ledger abstract. Please find enclose the ledger abstract- refer Annexure 11 (soft copy)
9	Security Charges	12,58,284	The invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the ledger abstract. Please find enclose the ledger abstract- refer annexure 12 (soft copy).

**Selling and Distribution Expenses**

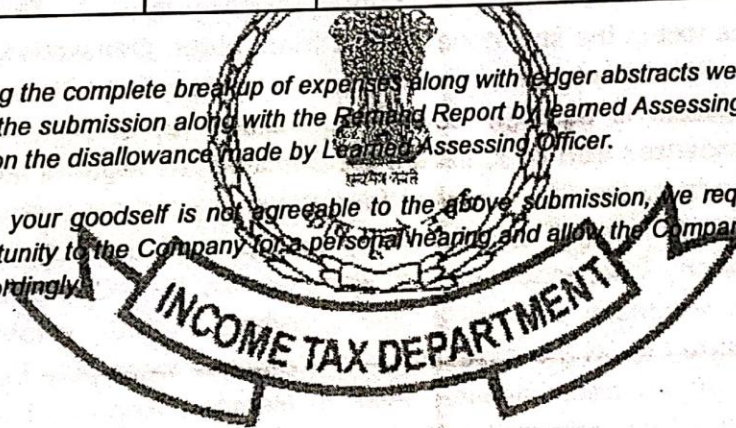
Sr. No.	Nature of Expenditure	Amount (Rs.)	Assessing Officer View	Reply to Assessing Officer's view
1	Call Centre Charges	20,05,497	The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 13 (Soft copy)

2	Advertisement & Marketing expenses	1,15,53,106	The Invoices submitted are correct. No ledgers have been filed in respect of aforesaid parties.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 14 (Soft copy)
3	Packing material consumed	38,30,725	For these expenses no details were submitted.	No opportunity given by AO to submit the Ledger Abstract. Please find enclose the Ledger Abstract - Refer Annexure 15 (Soft copy)
	Fuel and Delivery Scooter expenses	10,59,608		
	Other marketing and sales promotion expenses	19,20,571		

#### Conclusion

Thus considering the complete breakup of expenses along with ledger abstracts we request your good self to consider the submission along with the Remand Report by learned Assessing Officer and give a complete relief on the disallowance made by Learned Assessing Officer.

Further, in case your goodself is not agreeable to the above submission, we request to provide an additional opportunity to the Company for a personal hearing and allow the Company to make detailed submission accordingly.



5.5 The Rule 46A of the I. T. Rules, 1962 reads as under:

**\*46A. (1)** The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing

- (c) *where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
- (d) *where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal."*

So far as additional evidences in connection with estimated disallowance out of expenses claimed under head cost of sales, administrative expenses, selling and distribution expenses is concerned, it is observed that AO has not considered the details submitted by the appellant company. These details were prepared by the appellant and were submitted in the format asked by the AO. The AO himself has recorded this fact in the impugned assessment order. Considering these facts it is clear that the AO did not admit evidences which ought to have been admitted. Hence, case of appellant is squarely covered by clause (a) of Rule 46A, accordingly, additional evidences filed by appellant are admitted. As regards the disallowance of expenses made by the AO, it is clear from the impugned assessment order and the remand report that neither any deficiency was found in the details furnished by the appellant nor any independent enquiry was made by the AO to check the veracity of the claim of expenses incurred by the appellant. Further, whatever documents / details AO asked for in the assessment proceedings were duly furnished to the AO which fact has not been disputed even in Remand Report. Thus, the additional evidences filed are admitted. All these evidences were forwarded to AO for comments vide letter dated 23.01.2020 and report of AO and rejoinder of appellant were received and considered.

5.2 In the impugned Assessment Order, AO has observed that appellant has claimed expenses on account of cost of sales, administrative expenses, selling and distribution expenses at Rs.13,52,93,813/- in the P&L A/c pertaining to year under consideration. On perusal of the impugned Assessment Order it is observed that AO has not brought anything on record to prove the claim of the appellant in respect of the expenses i.e. cost of sales, administrative expenses, selling and distribution expenses were not genuine. The AO has merely recorded that the appellant company did not submit the details called for and disallowed 25% of the expenses in

the question labelling the same as higher. However the AO has not mentioned any basis for considering the expenses as higher, no parameter or market data which was compared with. Even the ledger of the parties confirming that they have sold the impugned material to Appellant Company has not been either disputed or verified by the AO. All the purchases made by appellant are supported by evidences including delivery challans. The AO has not disputed contra ledger accounts submitted by the appellant company. The AO has not even compared the claim of expenses made by the appellant in previous years or with expenses claimed by the similar assesseees operating the same industry or area of business but disallowed 25% of expense on adhoc basis. Moreover in the Remand Report, no proper opportunity of being heard has been provided to the appellant to rebut such observations. Even no enquiries have been made by AO to substantiate his contention that appellant has made bogus purchase transactions. It is an undisputed fact that the AO has not found any discrepancy in stock or sales reflected in audited annual accounts. It is not the case that all the details required were not furnished by the appellant. In view of these facts, it cannot be stated that appellant has not purchased the materials or incurred the expenses hence, the estimated additions made by the AO from out of the expenses is not found justified.

5.3 There is nothing on record to prove that the appellant had made inflated purchases or payment made to various concerns has received back in cash by the appellant. The gross profit and net profit shown by the appellant is in line with earlier Assessment Years. The AO has not disputed the basic fact that purchases/expenses incurred are recorded at prevailing market rate. It is observed that even profit ratio of the year under consideration has improved in comparison with earlier years which is apparent from following tabular chart submitted by appellant in statement of facts:

Particulars	AY 2011-12		AY 2010-11		AY 2009-10	
	Rs in Crores	% of Sales	Rs in Crores	% of Sales	Rs in Crores	% of Sales
Sales	19.24	100.00%	17.00	100.00%	13.79	100.00%
Cost of Sales	7.26	37.72%	6.76	39.78%	5.36	38.84%
Administrative & Establishment Expenses	4.23	22.00%	3.79	22.32%	3.08	22.32%

Selling & Distribution Expenses	2.04	10.58%	1.82	10.72%	1.50	10.88%
Profit Before Tax	2.32	12.06%	< 1.24	7.32%	0.34	2.48%

5.4 Further the appellant has duly substantiated the purchases made by it with cogent evidences and the same have not been disputed by the AO either at the stage of assessment proceedings or during remand back proceedings, in absence of any other corroborative evidences, adhoc disallowance out of purchases cannot be made. In absence of any specific non-compliance by appellant and without bringing anything on record to prove that expenditure debited in Profit & Loss Account is excessive, no adhoc disallowance can be made more particularly when Books of Account are audited and supported by tax audit report which are not found to be unreliable.

5.5 Legal evidence produced by the appellant in the form of bills, delivery challans, payments by cheque/ RTGS, the Books of Accounts containing details of purchases, stock and sales as well as the complete evidence which were required to be submitted, the veracity of same cannot be brushed aside on the basis of mere conjectures and surmises. The Honble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT [1959] 37 ITR 151 (SC) have held that no addition can be made on the basis of surmises, suspicion and conjectures. In the case of CIT vs. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC) the Apex Court has further held that the onus to prove that the apparent is not real is on the party who alleges it to be so. In the case of Umacharan Shah & Brothers Vs. CIT [1959] 37 ITR 271 (SC) have further held that the suspicion however strong cannot substitute the evidence. In the case at hand none of the evidences furnished by the appellant to AO has been found to be false or bogus.

5.6 In view of the aforesaid discussion, disallowance made by AO on adhoc basis amounting to Rs. 3,38,23,453/- being 25% of expenses claimed under the head of Cost of Sales, Administration & Establishment and Selling & Distribution cannot be sustained. AO is directed to delete the same. **The ground of appeal is allowed.**

In the result, the appeal is **partly allowed.**

6. We have thoroughly gone through the above facts and applicable law. It is observed that in remand report, AO has not carried out any substantial enquiry to confirm disallowances made on ad-hoc basis; no specific discrepancy has been pointed out in the submissions of the assessee. There is no case made out by the AO that inflated expenses has been booked out by the assessee and cash received back from the vendors, even the N.P declared by the assessee is substantially improved as compared to previous two years under consideration. Moreover, may not be full evidences in the form bills/vouchers submitted by the assessee before AO during the assessment proceedings, but substantial evidences were there alongwith financial ratios in favour of assessee, which confirms otherwise also the stand taken by assessee and without pointing out any specific deficiency. With this factual and settled legal back ground no **ad-hoc disallowance can be made in the case of the assessee.**

7. In the light of above we don't find any perversity in the order of the Ld. CIT (A) and also the procedure adopted with reference to Rule 46A of the Income Tax Rules, 1962. In the result, grounds raised by the revenue are **dismissed.**

8. **In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on 22<sup>nd</sup> day of September, 2023.

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 22/09/2023

*Sr. PS (Dhananjay)*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**