

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.3814/Del/2015

निर्धारणवर्ष/Assessment Year:2010-11

DCIT Circle 19(1) New Delhi.	<u>बनाम</u> Vs.	Subhash Chander Sehgal, Block A-3, LSC, Janakpuri, Delhi. PAN No.AATPS8259C
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.5420/Del/2017

निर्धारणवर्ष/Assessment Year:2012-13

Subhash Chander Sehgal, Block A-3, LSC, Janakpuri, C/o RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi. PAN No.AATPS8259C	<u>बनाम</u> Vs.	DCIT Circle 19(1) & 19(2) New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A No.7426/Del/2017

निर्धारणवर्ष/Assessment Year:2013-14

Subhash Chander Sehgal, Block A-3, LSC, Janakpuri, C/o RRA TAXINDIA, D-28, South Extension, Part-1, New Delhi. PAN No.AATPS8259C	<u>बनाम</u> Vs.	DCIT Circle 19(1) & 19(2) New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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

सुनवाईकीतारीख/ Date of hearing:	30.10.2023
उद्घोषणाकीतारीख/Pronouncement on	24.01.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These three appeals are filed by the Revenue (AY 2010-11) as well as Assessee (AYs 2012-13 & 2013-14) against different orders of Ld.CIT(Appeals).

2. First we take up the appeal of the Revenue for the AY 2010-11. The Revenue has raised the following grounds:

Grounds of ITA No.3814/Del/2015 (AY 2010-11):

- "1. i. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of various expenses amounting to Rs. 18,50,000/- without appreciating the fact that the assessee has failed to justify that the expenses were incurred wholly and exclusively for the purpose of business and more so for the legitimate needs of the business.*
- ii. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in while allowing expenses of Rs. 18,50,000/- disallowed by the Assessing Officer under various heads in simply following the decision of the earlier year without appreciating the facts of this year and without appreciating the fact that no bills were produced to support the expenditure and failed to show the purposes for which the expenditure were incurred."*
2. i. *On the facts and in the circumstances of the case and in law, the Ld. CST(A) has erred in deleting the disallowance of Rs.16,21,955/- made by the Assessing Officer on account of*

interest paid to banks ignoring the fact that assessee's own funds reflected in balance sheet stand deployed in certain assets and cannot be said that assets and funds were available with the assessee for making advances to the sister concerns."

- ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the interest bearing loans were raised and interest free loans were advanced to sister concerns as established by the Assessing Officer in the assessment order."*
- 3. i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,86,000/- without any basis and material facts on record.*
 - ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 10,86,000/- without following the mandatory procedure under Rule 46A referring the issue back to the Assessing Officer for fresh decision.*
- 4. i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allow the deduction u/s 80IB/IC of the Act, ignoring the fact that the same issue is pending with var appellate authorities.*
 - ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in igr the provision laid in 3rd proviso of section 80IB(4) of the Act.*
 - iii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s 80IB ignoring the fact that Guwahati unit was formed by splitting up or reconstruction of business already in existence at Baddi Unit.*
 - iv. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in following the order of earlier years and in holding that comparative analysis of financial results, production details unreasonable profitability difference etc of the units at Guwahati & Baddi were not relevant to the issue under consideration as the Assessing Officer had not invoked section 80IB(13). That even if section*

not specifically mentioned, the Assessing Officer had held at a number of places that during this year the profit of Guwahati Unit was highly inflated by, among other reasons shifting expenses of Guwahati unit to Baddi unit on one hand and by shifting turnover from Baddi unit to Guwahati unit which is prohibited by various provisions of section 80IC of the Act."

3. At the outset, the Ld. Counsel for the assessee submits that ground nos. 1, 2 & 4 of grounds of appeal of Revenue are identical in the appeal filed by the Revenue for the AY 2009-10 and the Tribunal by order dated 06.04.2023 in ITA No.3205/Del/2014 decided in favour of the assessee.

4. Ld. DR fairly agrees with the submission of the Ld. AR.

5. Ground no.1 is relating to *ad hoc* disallowance of various expenses debited to Profit & Loss Account. We find that this is a recurring issue from earlier years and Tribunal deleted such *ad hoc* disallowances for the assessment years 2004-05, 2005-06 & 2009-10. In the AY 2009-10 the Tribunal sustained the order of the Ld.CIT(A) and deleting the *ad hoc* disallowance observing as under:

"12.4 Ground No.5 & 6 relate to disallowance of expenses under various heads amounting in all to Rs.10,00,000/- which stands deleted by the Ld.CIT(A). The Ld. AO disallowed Rs.2,00,000/- each out of (i) sales promotion (ii) marketing (iii) general expenses (iv) repair and maintenance and (v) vehicle repair and maintenance aggregating to Rs. 10,00,000/- for the reason that the assessee has not produced complete

books of account; that it was not proved that expenses incurred were wholly and exclusively for the purpose of business and that these were not supported by bills.

12.5 On appeal, the Ld. CIT(A) noted that similar disallowance was made in preceding last five years which were deleted by the Ld. CIT(A) as the additions were made on ad-hoc basis and nothing adverse was brought on record by the Ld.AO. In AY 2009-10 also similar disallowance has been made by the Ld. AO without bringing on record any specific adverse material which cannot be sustained. He deleted the impugned disallowance.

12.6 We are of the considered view that ad-hoc disallowance without bringing on record any adverse material is not sustainable. We observe that the Ld. AO required the assessee to produce the vouchers for the month of March, 2009. The assessee complied and the Ld. AO verified the same on test check basis but no defect was found. Therefore the impugned disallowance is not justified and hence has rightly been deleted by the Ld. CIT(A). Accordingly, we reject ground No. 5 and 6 of the Revenue as well.”

6. As there are no change in facts in the current year following the order of the Tribunal, we sustain the order of the Ld.CIT(A) in deleting the ad hoc disallowance of expenses. Ground no.1 of Revenue is dismissed.

7. Ground no.2 of grounds of appeal is relating to deletion of disallowance of interest paid to banks, we find that this issue also came up for consideration before the Tribunal in earlier AY i.e. 2009-10 and the Tribunal sustained the order of the Ld.CIT(Appeals) in deleting this disallowance observing as under:

“12.7 Ground No. 7 and 8 relate to disallowance of Rs. 13,52,427/- made by the Ld. AO on account of interest paid to banks and others which has been deleted by the Ld. CIT(A). The Ld. AO found that the assessee paid interest of Rs. 90,16,177/- to banks and others. Since interest bearing loans obtained by the assessee from banks and others have later been utilized for the sister concern of the assessee, interest paid on such loans is not allowable as business expenditure. He, therefore, disallowed 15% of the claim of interest paid at Rs. 90,16,177/- which worked out to Rs. 13,52,427/-.

12.8 The Ld. CIT(A) observed that similar disallowance was made in preceding six assessment years. However, the disallowance made in AY 2003-04 was deleted by the Tribunal for the reason that the assessee had sufficient funds of its own to cover the advances to sister concern Ozone Pharmaceuticals Ltd. In subsequent AYs 2004-05 to 2008-09, the Ld. CIT(A) deleted the disallowance as no specific instance of diverting funds to sister concern was brought on record by the Ld. AO. The Ld. CIT(A) further observed that in AY 2009-10 the Ld. AO made the disallowance even without mentioning the name of the sister concern to whom advance was allegedly made by the assessee. The loans obtained by the assessee from Citi Bank and ICICI Bank were utilized for working capital of the assessee and from the balance sheet and details of loans and advances it is obvious that no loan or advance was made to any relative or sister concern. In the absence of any instance of utilization of borrowed fund for purposes other than business brought on record by the Ld. AO, the Ld. CIT(A) deleted the impugned addition.

12.9 Similar disallowance came up for our consideration in AY 2004-05 and AY 2006-07 and for the reasons recorded in our order of date, we have concurred with the findings of the Ld. CIT(A). Since the facts are similar, following our order for the AY 2004-05 and AY 2006-07, we agree with the view of the Ld. CIT(A) and reject ground No. 7 and 8 of the Revenue.”

8. Facts being identical. Following the said order, we sustain the order of the Ld.CIT(A) and reject ground no.2 of Revenue.

9. Ground no.3 is in respect of deletion of salary received from Ozone Pharmaceuticals Ltd. It is observed from the assessment order that this disallowance was made stating that in the absence of any details filed by the assessee the salary received by the assessee is calculated on the basis of earlier year. Ld. CIT(Appeals) deleted this disallowance for the reason that the assessee has not received any salary during the year and the claim for TDS was only a mistake and the TDS return was also revised, therefore, since no salary has been received by the assessee. The Ld.CIT(A) deleted the addition made by the AO. The Revenue could not controvert the findings of the Ld. CIT(A) and, therefore, the same is sustained. Ground no.3 of Revenue's appeal is rejected.

10. Coming to ground no.4 which is in respect of deduction u/s 80IB/80IC, we find that the Tribunal decided this issue in favour of the assessee for the AY 2009-10, following the order of the Tribunal for the AY 2003-04. The relevant portion of the order of the Tribunal for AY 2009-10 is as under:

“12.1 Ground no. 1 to 4 relate to deduction of Rs. 2.08,53,170/- claimed by the assessee under section 80IB/80IC of the Act which was disallowed by the Ld.

AO. But on appeal, the Ld. CIT(A) allowed the claim of the assessee. Aggrieved the Revenue is before us.

12.2 It is observed that the Ld. CIT(A) enumerated on page 16 of his appellate order the main observation of the Ld. AO for making the impugned disallowance. Relying on the order of the Tribunal for AY 2003-04 on the issue wherein the aforesaid observations of the Ld. AO have been dealt with by the Tribunal in its order (supra), the Ld. CIT(A) recorded the finding in para 4.1.4 at page 19 of his order that in AY 2009-10 also there is no change in the business activity of the assessee and no new facts have been brought on record by the Ld. AO. The Ld. CIT(A) further observed as under: -

“4.1.4 In the instant AY 2009-10 the appellant claimed the deduction under the provision of sec 80IC of the Act. There is no dispute that the Guwahati unit of the appellant is located in notified area in EPIP, Amingaon, Guwahati in Assam. There being no article or thing specified in thirteenth schedule for industrial undertaking in notified area in NER, therefore, manufacture of any article or thing by an industrial undertaking in notified area in NER is eligible for deduction u/s 80IC. Therefore, under the new provisions of sec 80IC(2)(a)(iii) and 80IC(3)(i) the profits and gains derived from Guwahati unit is eligible for 100% deduction u/s 80IC(1) for a period of 10 assessment years commencing with initial assessment year 2002-03. The instant AY 2009-10 being the eighth year setting up of the unit, therefore, the Guwahati unit is eligible for 100% deduction u/s 80IC of the Act, provided, profits and gains are derived from manufacture or production of gnu article or thing and other conditions specified therein are fulfilled.

4.1.5 Under the new provision of sec 801C, there is no restriction regarding number of workers to be engaged in the industrial

undertaking. Therefore, disallowance of deduction u/s 80IC by the AO on the ground that required number of workers were not engaged in Guwahati unit, is erroneous and disallowance on this ground cannot be sustained. Although the number of workers being engaged is not a requirement, however, from the daily attendance register, Provident Fund, & ESI contribution forms, it is observed that more than 100 workers were engaged in Guwahati Unit in the relevant previous year. It is also note worthy that the appellant by its submission dt. 30.11.2011 produced the wages register of the writs at Guwahati along with certificates of EPF and Inspector of factories as an evidence of workers engaged in the Guwahati Unit.

4.1.6 On the issue whether the industrial undertaking is engaged in production of any article or thing during the relevant previous year, AO called for evidence in respect of deduction claimed under chapter VIA as per questionnaire dt. 20.07.2011 and trading results of manufacturing unit and modus operandi as per order sheet recording dt. 01.12.2012. The assessee vide its submission dt. 30.11.2011, 09.12.2011 and 14.12.2011 furnished the details as called for. The assessee has also filed complete details of products manufactured and closing stock of finished goods unit wise as per its submission dated 09.12.2011 and 14.12.2011. From the particulars furnished it is evident that the assessee has carried out production of ayurvedic medicines. The requirement u/s 80IC is manufacture or production of article or thing. The AO has failed to show how the manufacture of ayurvedic medicines by the assessee does not involve any manufacturing or production activity. Moreover as observed earlier, business activity in instant assessment year is the same as in AY 2003-04, wherein ITAT held that appellant is producing ayurvedic medicines which are article or thing.

4.1.7 *The books have been audited and produced before AO as per assessee's reply to the AO dt. 30.11.2011. Copy of the ledger account of various items debited in the P&L account were furnished before the AO. Audit report u/s 44AB and 10CCB has also been filed. Not a single instance of transfer of finished goods or services from Baddi unit to the Guwahati unit is pointed out by the AO. The deduction u/s 80IC was claimed as per the audit report u/s 10CCB filed. Thus, all the conditions regarding grant of deduction have been satisfied. In view of the above, the deduction u/s 80IC of Rs.2,08,53,170/- claimed by the appellant is allowed."*

12.3 *On careful consideration of the issue involved, we are of the view that the Ld. CIT(A) has dealt with the matter from all the angles and arrived at the conclusion that the assessee's claim of impugned deduction under section 80IC is allowable. We concur with his conclusion. Finding no substance in ground no. 1 to 4 of the Revenue, we reject them."*

11. Respectfully following the said decision, we uphold the findings of the Ld.CIT(A) and reject the ground no.4 of grounds of appeal of the Revenue.

12. In the result, Revenue's appeal is dismissed.

13. Now we take up the appeal of the assessee for the AY 2012-13 and the grounds are as under:

Grounds of ITA No.5420/Del/2017 (AY 2012-13):

"1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in holding that the jurisdiction was assumed in accordance with law and has erred that notice*

u/s 143(2) dated 07.08.2013 was served on the assessee.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned assessment order due to non-service of notice u/s 143(2) is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO for making disallowance of Rs.5,08,43,220/- on account of selling & distribution expenses u/s 37 of the Income Tax Act, 1961 and that too without appreciating facts and circumstances of the case and that too by recording incorrect facts and findings.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the disallowance of Rs.5,08,43,220/- out of Rs.20,33,72,877/- made by Ld. AO on account of sales and distribution expenses is bad in law and against the facts and circumstances of the case.”*

14. At the outset, the Ld. Counsel for the assessee submits that ground no.1 & 2 are not pressed. In view of the submissions of the Ld. Counsel ground nos. 1 & 2 of grounds of appeal are dismissed as not pressed.

15. Ground no.3 & 4 of grounds of appeal is in respect of sustaining the disallowance of selling and distribution expenses.

16. Ld. Counsel for the assessee referring to page 1 of the assessment order submits that in the course of assessment

proceedings the assessee's Authorized Representative attended the proceedings and submitted the documents, evidences in support of its claims as called for during the proceedings. The Ld. Counsel referring to page 2 of the assessment order submits that the Assessing Officer disallow 25% of selling and distribution expenses on the ground that the expenses are excessive in comparison to total turnover of the assessee. The Ld. Counsel for the assessee referring to page 107 to 162 of the Paper Book submits that assessee has provided all the details in respect of selling and distribution expenses namely bonus offer free issues, price difference claim, rebate/discount super distributor, discount before tax, sales promotion, printing and stationery and travelling expenses. The Ld. Counsel for the assessee submits that assessee has incurred loss of Rs.7,07,79,932/- on account of various reasons. The sales of the assessee decreased to Rs.43,60,03,387/- from Rs.61,88,25,792/- from the previous year. The assessee has launched new range of products on huge advertisement/sales promotion expenses were incurred. The newly launched products were not successful as anticipated and due to which sales were decreased. However, there was increase in the percentage of expenses. Ld. Counsel submits that assessee has shifted his head office from Delhi to

Gurgaon due to which administrative expenses also increased. Further, there are certain expenses which are always fixed. Therefore, due to loss of sales and various other factors there was loss in the assessment year. Ld. Counsel, therefore, submits that there is no justification for disallowing 25% of sales and marketing expenses on *ad hoc* basis even though complete details were furnished by the assessee in the course of assessment proceedings. The reason for making disallowance that the expenses are excessive in comparison to total turnover of the assessee is not at all justified in view of the above submissions.

17. On the other hand, Ld. DR submits that the assessee has not produced all the books of account before the Assessing Officer. Ld. DR strongly supported the orders of the Ld.CIT(A).

18. Heard rival submissions, perused the orders of the authorities below.

19. On perusal of the assessment order, it is noticed that the Assessing Officer disallowed 25% of selling and distribution expenses on *ad hoc* basis are primarily on the ground that these expenses are excessive in comparison to total turnover of the assessee and the observation of the Assessing Officer is as under:

“3.2 While exploring the reasons for loss from business activities of the assessee, apart from other reasons it is noted that the assessee has incurred Rs. 20,33,72,877/- on account of selling & distribution expenses” and claimed deductions u/s 37 of the Act. As per the provisions of section 37 of the I.T. Act for claiming a deduction under this section following conditions must be satisfied:-

- (a) Such expenditure should not be covered under the specific sections i.e. sections 30 to 36.*
- (b) Expenditure should not be of capital nature.*
- (c) The expenditure should have been incurred during the previous year.*
- (d) The expenditure should not be of a personal nature.*
- (e) The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.*

Since the expenses on this account are excessive in comparison to total turnover of the assessee, the AR was specifically asked to provide all relevant details i.e. ledger and bills & voucher to substantiate his claim for such a huge expense and also provide justification and correlation with the business. In response to query raised, the AR has provided only part ledger of 'marketing & sales promotion expenses' and failed to provide complete books of a/c along with supporting vouchers even after giving enough opportunity, thus failed to justify / substantiate the claim of such expenses satisfactorily and also failed to co-relate such increase in expenses with revenue/business of the assessee. During discussion it was intimated to the AR that in absence of acceptable justification and correlation it will be difficult to allow the entire claim of deduction. However, the AR submitted that the expenses were expended during normal course of business and with connection to the business of the assessee.

3.3 From the perusal of details filed it is noted that the entire expense on this account as claimed, cannot be said as "wholly & exclusively" expended for business purposes as required by the section 37 of the I.T. Act for claiming such a deduction , also the expenses incurred on this account has been felt as excessive. Thus, the assessee failed to substantiate his claim for this expense upto the satisfaction of the AO.

3.4 In view of the above discussion and position of law an amount of Rs. 5,08,43,220/r which is equal to 25% of the expense incurred as 'selling & distribution expenses' i.e. Rs. 20,33,72,877/- is disallowed and added back to the returned loss of the assessee. Further, for this purpose, reference can also be taken from the following decisions of various courts on this issue:-

- Every loss is not so deductible unless it is incurred in carrying out the operation of the business and is incidental to the operation. CIT Vs. Nainital Bank Ltd. (SC) 55 ITR 707, CIT Vs. Textool Co. Ltd. (Mad) 135 ITR 200
- Taxing authorities have right to consider whether expenditure was excessive. Lakshminarayan Madan Lai Vs. CIT (SC) 86 ITR 439, Swadeshi Cotton Mills Co. Ltd. Vs. CIT (SC) 63 ITR 57, Lakshmiratan Cotton Mills Co. Ltd. Vs. CIT (SC) 73 ITR 634.
- Income tax authorities can examine reasonableness and genuineness of any paymerit like royalty even if such payment CIT Vs Nestle India Ltd. (Del) 199 Taxman(Mag)321
- The doctrine that the businessman is the best judge of business expediency does not affect the right, any duty, of the assessing authorities to know whether it was incurred for business purposes and not for other extraneous consideration. Jaipur Electro Pi Ltd, Vs. (Raj.) 134 CTR 237

- *The adverb 'wholly' in the phrase 'laid out or expended For business' refers to the quantum of expenditure - The adverb 'exclusively has reference to the object or motive of the act behind the expenditure. Unless such motive is solely for promoting the business, the expenditure will not qualify for deduction. CIT Vs. T.S. Hajee Moosa & Co. (Mad.) 153 ITR 422, Mysore Kirloskar Ltd. Vs. CIT (Kar) 166 ITR 836, Siddho Mai & Sons Vs ITO (Del) 122 ITR 839.*
- *Burden on assessee to prove that expenses were laid out wholly and exclusively for purposes of business. Goodlas Nerolac Paints Ltd. Vs. CIT (Bom) 137 ITR 58, Assamm Pesticides & Agro Chemicals Vs. CIT (Gau) 227 ITR 846*
- *The mere fact that payment has been made under contract or agreement is not conclusive that the expenditure is incurred wholly and exclusively for the purpose of business. Jayshree Tax & Industries Ltd. Vs. CIT (Cal) 272 ITR 193, CIT Vs. Premier Breweries Ltd. (Ker) 279 ITR 51.*

[Addition of Rs. 5,08,43,220/-]

Having regard to the nature of addition made above, I am satisfied that the assessee has concealed the particulars of income and furnished inaccurate particulars of income within the meaning of explanation to Section 271(1)(c). Penalty proceedings u/s 271(1)(c) r.w.s. 274 of the Act is initiated.”

20. On careful perusal of the assessment order, we noticed that though the assessee was required to furnish complete books of account with supporting vouchers and ledger accounts in respect of sales and marketing expenses and to co-relate such expenses with

the business of the assessee, it appears that the assessee furnished only part ledger of marketing and sales promotion expenses. Thus, the Assessing Officer was of the view that the entire expenses on this count cannot be said to be incurred wholly and exclusively expended for business purposes and, therefore, 25% of the expenses incurred towards selling and distribution were disallowed on estimation basis. However, it appears that the assessee produced the summary of expenses.

21. Considering the submissions of the assessee and the order sheet notings and the findings of the Assessing Officer, the Ld.CIT(Appeals) sustained the disallowance observing as under:

“I have considered all the facts and circumstances of the case. The Assessing Officer in his order has stated categorically that the appellant was asked to provide or relevant details i.e. ledger and bills and vouchers to substantiate the claim of such huge expenses under the head salary and distribution expenses. The appellant avail to provide complete books of accounts, along with supporting bills and vouchers before AO, in spite of being given an opportunity.

During appellate proceedings, however, the appellant has stated that complete books of accounts, bills and vouchers were produced before Assessing Officer. To verify the claim of the appellant, the assessment record was summoned. From the perusal of assessment record it was seen that on 11/03/2015 the Assessing Officer in his order sheet has recorded as under:

"Sh H.P.S Gujral, CA/AR present for hearing and produced books of account, which test checked. ON examination of the details it is noticed that during the year assessee has claimed expenses on account of marking and sale promotion which approximately of 47% of total turnover. Previous year it was 31%. On examination the further details bills/vouchers and ledger related to these expenses, some bill book found not properly maintained, some found unsigned, some found not documented properly, unvouched. According the AR show cause on this issue that why not disallowance be made as assessee has failed to substantiate its claim and failed to produce enough evidences. Case adjourned for 18/03/2015 for explanation as well we complete books of accounts, bills vouchers for support of its claim as only vouchers/bills produce partly. "

On 18/03/2015 again the appellant failed to produce complete books. The Assessing Officer in the order sheet recorded as under: -

"Sh. H.P.S. Gujral, CA/AR attended and filed reply on account of show cause, which found not acceptable. Further as the assessee failed to substantiate its claim and failed to produce enough evidence/documents the expenses on this head is disallowed upto 25% of total claim expenses of Rs.22.33 crores. It is pointed to AR the assessee could not explain the said expenses are related to business. Further the complete books, bills/vouchers are also not produced."

From the perusal of the recording of the Assessing Officer it is apparent that- the Assessing Officer gave enough opportunity as well as reason to the appellant to comply, as far as the claim of expenses on a/c of salary and distribution expenses were concerned.

During the appellate proceedings, the Ld AR was asked to submit the details of expenditure under the head marking and distribution expenses party wise along with complete address, evidence and books. Vide

letter dated 19/06/2017 the Ld.AR submitted the details of salary and distribution expenses. However with regard to the address the Ld. AR submitted in his letter as under:-

"Since the expenses incurred relates to payment made to thousands of persons /parties it is time taking to prepare a list in corporting the addresses of all the parties. It is therefore, humbly prayed that kindly mark/identify the parties /entries so that specific information in respect of those transactions may be furnished. However, on the same day he categorically stated that he has nothing more to submit before me, which was duly recorded in the order sheet."

The submission of the Ld. AR as above unambiguously demolishes the stance taken by -the appellant that all the books of accounts as well as the details were submitted before Assessing Officer with bills and vouchers. The Ld. AR could not prepare the complete list of parties with whom the transaction of Rs. 1 lakhs or more had taken place, with their addresses, being very bulky. Then how can the appellant claim that the complete details alongwith evidence was produced before Assessing Officer. Just providing the addresses on the parties, as per the AR involve thousands of entries, in such a scenario, expecting the appellant to furnish the complete details, suo moto before Assessing Officer is not believable. The contention of the appellant to the contrary is rejected. This leads us to the second issue as to if the appellant did not furnish the complete information and evidence before Assessing Officer which was in his possession, then why should he be allowed to take advantage of his own failure before the appellate authorities.

The argument of the appellant that no businessman can be compelled to maximize his profit, is well taken. However, it is also true that no expenditure can be allowed without cogent evidence. The appellant has been not able to bring on record the "cogent evidence"

which could have enabled the assessing officer to allow such expenditure.

Considering all the facts and circumstances, I am of the opinion that the Assessing Officer was not provided with sufficient details and evidence and therefore he had no option available with him but to estimate a disallowance. There could be an argument with regard to the quantum of disallowance but there should not be any hesitation in holding that such estimation was justified. In the light of discussion above, I find no reason to interfere with the order of the Assessing Officer and the same stands confirmed.”

22. It could be seen from the above, the Ld.CIT(A) sustained the addition taking note of the order sheet noting, where the AO noted that the complete books, bills, vouchers are not produced the bills, vouchers, ledger related to these expenses, bill book found not properly maintained, some found unsigned, some found not documented properly, un-vouched. It is also the observation of the Ld.CIT(A) that the assessee could not prepare the complete list of parties with whom the transaction of Rs.1 lakh or more had taken place with their addresses. Ld.CIT(Appeals) also took note of the letter furnished by the assessee dated 19.06.2017, wherein the assessee has stated that since the expenses relates to payment made to persons/parties running into thousands it is time taking to prepare a list incorporating the addresses of all the parties and, therefore, to mark identity of the parties entries so that the information in respect of those transactions may be furnished.

23. In view of the above reasons, the Ld.CIT(A) was of the view that the AO is justified in holding that the entire sales and marketing expenses cannot be said to be incurred wholly and exclusively for the purpose of business of the assessee and, therefore, sustained the disallowance made by the AO.

24. Taking the totality of the facts and circumstances into consideration, the findings of the AO as well as the Ld.CIT(A) and the evidences produced in the Paper Book, we are of the view that the disallowance made by the AO at 25% is excessive. Taking note of various deficiencies pointed out by the AO as well as the findings of the Ld.CIT(A) and taking the submissions of the Assessee into consideration to meet the ends of justice, we direct the AO to restrict the disallowance to 10% of the selling and distribution expenses as against 25% disallowed and recompute the income accordingly.

25. Ground no. 3 & 4 are partly allowed.

26. In the result, appeal of the assessee is partly allowed.

27. Coming to appeal for AY 2013-14 following are the grounds raised by the assessee:

1. *“That having regard to the facts and circumstances of the case, the Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in making disallowance of Rs.4,48,95,286/- on account of selling and distribution expenses u/s 37 and that too by recording incorrect facts and findings and without observing the principles of natural justice.*
2. *That in any case and in any view of the matter, action of ld.CIT(A) in confirming the action of Ld.AO in making disallowance of Rs.4,48,95,286/- on account of selling and distribution expenses u/s 37, is bad in law and against the facts and circumstances of the case.”*

28. These grounds are identical to ground nos. 3 & 4 of grounds of appeal of the assessee for the AY 2012-13 and the decision taken therein shall apply *mutatis - mutandis* to the appeal for the AY 2013-14. These grounds are partly allowed.

29. In the result, appeal of the Revenue is dismissed and the appeals of the assessee are partly allowed.

Order pronounced in the open court on 24/01/2024

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 24/01/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi