

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.87/Lkw/2023
Assessment Year: 2014-15

M/s Eugenics Medi Sciences Pvt. Ltd. 101-C, Govinda Building, 1-A, Shahnajaf Road, Lucknow. PAN:AABCE5989Q	Vs.	Dy.C.I.T., Range-2, Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri Shubham Rastogi, C.A.
Respondent by	Shri Sanjeev Krishna Sharma, Addl. CIT (D.R.)

ORDER

PER ANADEE NATH MISSHRA:A.M.

(A) The present appeal vide I.T.A. No.87/Lkw/2023 has been filed by the assessee against impugned order dated 24/01/2023 (Order No.ITBA/NFAC/S/250/2022-23/1049054487(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short]. The grounds of appeal are as under:

- "1. That the Authorities below erred on facts and in law in not considering that the Repairs and Maintenance expenditure debited in Audited Profit and Loss Account was Rs.14,91,084/-

and not Rs.20,40,018/- and thus adhoc disallowance cannot be made out of incorrect figure.

- 2. The Ld. C.I.T. (A) erred on facts and in law in upholding the total Adhoc Disallowance of Rs.15,80,633/- (Rs.3,15,355/- out of Office Expenses, Repairs and Maintenance Expenses and Rs.12,65,277/- out of Delivery & Cartage Expenses) without appreciating that as per nature of business, expenditure has to be incurred in Cash in small amount for trolley and Labours, which are verifiable and made solely and exclusively for the purpose of business.*
- 3. The Ld. C.I.T. (A) upheld the addition of Rs.12,65,277/- being 5% of Delivery and Cartage Expenses as added by Ld. A. O. without appreciating that as per nature of business Freight and Cartage in piece meals has been paid as Trolley Charges and Labour Charges in Cash for which proper vouchers were maintained and books of accounts were duly audited.*
- 4. The Ld. C.I.T. (A) upheld the 5% disallowance on Office Expenses, Repairs and Maintenance Rs.3,15,355/- without appreciating that petty expenses were incurred in cash on day to day basis towards Office Expenses and payment made to Labour towards Repairs and Maintenance for which proper vouchers were maintained and books of accounts were duly audited.*
- 5. The Ld. C.I.T. (A) failed to appreciate that in the case of Company, no Adhoc Disallowance for Expenses should be made on the basis of Personal Element. Further, all the expenditures were incurred solely and exclusively for the purpose of business and as per nature of business has to be paid in cash.*
- 6. The addition upheld is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon."*

(B) In this case assessment order dated 30/12/2015 was passed u/s 143(3) of the Income Tax Act, 1961 ("IT Act" for short) whereby the

assessee's total income was determined at Rs.51,50,248/- as against returned income of Rs.32,34,260/-. The Assessing Officer disallowed 10% out of office expenses amounting to Rs.63,07,119/- and 5% out of "delivery and cartage" expenses amounting to Rs.2,53,05,555/-. Thus, the quantum of disallowance made in the assessment order was Rs.6,30,711 out of "office expenses" and Rs.12,65,277/- out of "delivery and cartage" expenses. The total disallowance made by the Assessing Officer was Rs.18,95,988/- (Rs.6,30,711/- plus Rs.12,65,277/-). The disallowance was made on the ground that the assessee could produce only self-made bills and vouchers and most of the payments were made in cash.

(C) The assessee filed appeal in the office of learned CIT(A). The impugned appellate order dated 24/01/2023 was passed by the learned CIT(A) whereby the CIT(A) restricted the disallowance to 5% of the total amount of expenditure made by the Assessing Officer under the aforesaid heads (Rs.63,07,119 plus Rs.2,52,05,555 i.e. Rs.3,16,12,674/-). The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 24/01/2023 of learned CIT(A). In the course of appellate proceedings, a paper book was filed from the assessee's aide containing the following particulars:

S.No.	Particulars
1.	Copy of Ledger Account of Repairs and Maintenance
2.	Copy of Ledger Account of Office Expenses
3.	Copy of Loading and Unloading Expenses
CASE LAWS	
4.	Copy of Ledger Account of Delivery and Cartage Expenses of all the branches at Bareilly, Lucknow, Amethi, Badayun, Bahraich, Sultanpur, Balrampur, Raebareilly, Pilibhit,

	Gonda, Lakhimpur, Faizabad, Hardoi, Palia, Shahjahanpur, Gola Districts
5.	Audited Balance Sheet and Profit and Loss Account for A.Y. 2014-15
6.	[2018] 99 taxmann.com 284 (SC) in the case of Principal Commissioner of Income Tax v. R.G. Buildwell Engineers Ltd.
7.	ITA No. 474/LKW/2019, A.Y.-2014-15 in the appeal of Shri Rajendra Kumar Chowdhary, Faizabad Vs. Income Tax Officer-II, Faizabad
8.	ITA No. 449 & 450/LKW/2018, A.Y.-2012-13 and 2013-14 in the appeal of M/s Premier Car Sales Limited, 9-Shahnajaf Road, Lucknow Vs. ACIT, Range-5, Lucknow

(D) At the time of hearing before us, the learned Authorised Representative for the assessee submitted that the expenses claimed by the assessee were actually incurred by the assessee for the purpose of assessee's business. However, most of the payments under the aforesaid heads were of petty amounts; and the recipients insisted on cash payments. Further most of the times the recipients did not have their bill book/cash book which is why the assessee had to account for these expenses through internal vouchers i.e. self-made vouchers.

(D.1) The learned Sr. Departmental Representative submitted that the assessee did not appear before the learned CIT(A) and the learned CIT(A) has passed a speaking order. Accordingly, he submitted, that the assessee did not deserve any relief.

(D.2) In reply, the learned Authorised Representative for the assessee submitted that the learned CIT(A) did not ask for any specific details during appellate proceedings and also; the assessee did not want to furnish any fresh materials in the course of appellate proceedings before the learned

CIT(A). Therefore, he submitted, the non-appearance by the assessee in the course of appellate proceedings before the learned CIT(A) was of no consequence as the assessee was to rely only on the materials submitted during the assessment proceedings. He also submitted that all relevant details are available and further that the issue in dispute was a simple matter pertaining to adhoc disallowance out of expenses claimed by the assessee by applying certain percentage of the expenses claimed as deduction. He proposed that the disallowance should be restricted to 2.5% of the expenses claimed as against 5% determined by learned CIT(A).

(E) We have heard both the sides. We have perusal the materials on record. There is no dispute regarding facts of the case. The dispute only pertains to what percentage of the expenses claimed by the assessee under aforesaid heads should be disallowed. The Assessing Officer disallowed 5% out of aforesaid delivery and cartage expenses and 10% out of office expenses. The learned CIT(A) restricted the disallowance to 5% of the expenses claimed. The assessee has proposed at the time of hearing before us that the disallowance should be restricted to 2.5% of the expenses. Having regard to specific facts and circumstances of this case and after hearing representatives of both sides, we are of the view, the aforesaid reasons [mentioned in foregoing paragraph (D.2) of this order] submitted by learned Counsel for the assessee that in the specific facts and circumstances of the present case, the non-appearance by the assessee before the learned CIT(A) is, by itself, no reason to take an adverse view against the assessee. Further, we find that neither the Assessing Officer nor the learned CIT(A) have given any reasoning for the disallowance by applying certain percentage (as aforesaid) to the expenses claimed by the assessee under the aforesaid heads. They have not provided any

explanation in their respective orders, on the basis of which certain percentages were applied by them for quantifying part of the expenses under the aforesaid heads. In these facts and circumstances, the proposal of the assessee that the expenses should be restricted to 2.5% of the expenses claimed under aforesaid heads; is fair, reasonable and acceptable. Accordingly, we direct the Assessing Officer to restrict the disallowance to 2.5% of the expenses (aforesaid amount of Rs.3,16,12,674/-) under the aforesaid heads. Thus disallowance amounting to Rs.7,90,317/- out of aforesaid claim of the assessee amounting to Rs.3,16,12,674/- (under the heads "Office Expenses" and "Delivery and Cartage Expenses") is sustained and remaining amount of disallowance is deleted.

(F) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced in the open court on 27/02/2024)

Sd/.
(SUDHANSHU SRIVASTAVA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:27/02/2024
*Singh

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. Concerned CIT
4. CIT(A)
5. D.R. (ITAT)

Assistant Registrar