

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 11/DEL/2020
Asstt. Yr: 2014-15**

Income-tax Officer, Ward-1, Rohtak.	<u>Vs</u>	D.D. & Co., SCF-45, Huda Complex, Rohtak-124001. PAN- AAAAD9729N
APPELLANT		RESPONDENT
Assessee represented by	Shri Navin Gupta, Adv.	
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR	
Date of hearing	22.04.2024	
Date of pronouncement	25.04.2024	

ORDER

PER M. BALAGANESH, AM:

The captioned appeal, preferred the Revenue, is directed against the order of learned Commissioner of Income-tax (Appeals), Rohtak, dated 24.10.2019, arising out of assessment order dated 28.12.2016, passed by the Income-tax Officer, Ward-1, Rohtak u/s 143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2014-15.

2. The Revenue has raised following grounds before us:

"1. On the facts and the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 1,52,11,000/- made by the A.O. (Rs.1,41,11,000/- on account of disallowing the challan paid in the name of Sh. Harish Kumar & Rs.11,00,000/- on account of disallowing the subvend fee paid.) during assessment proceedings. The Ld. CIT(A) merely considered the statement of Sh. Harish Kumar without verification of any documentary evidence and deleted the said addition without appreciating the facts of the case mentioned in detail in assessment order.

2. *That there is violation of law evident from the facts of the case and the same cannot be regularised by any other law enforcing agency under the provision of any other statute. In this case assessee claimed expenses of L1 which was allotted to some other person by Excise & Taxation Department, Haryana and the same is not rightly an allowable expense of the assessee as he was not eligible for allotment of L1 license.*

3. *That the appellant craves leave to add, amend or alter any of the grounds of appeal at the time of hearing of the appeal, if deemed necessary, in the interest of justice & equity."*

2.1 The Revenue vide letter dated 04.01.2024 had also raised the following additional ground, which reads as under:

"4. That there is violation of law in the case as the assessee has booked the license fee and subsequent fee which was in the name of Shri Harish Kumar. Shri Harish Kumar is not part of the A.O.P. (appellant assessee)."

3. We have heard rival submissions and perused the materials available on record. The assessee is an association of persons (AOP) and had filed its return of income for the assessment year 2014-15 on 30.09.2014 declaring total income of Rs. 5,79,441/-. The assessee runs a retail vend of liquor shop. The assessee had offered income from sale of liquor as its income and had claimed the expenses thereon under the head income from business. The learned AO observed that the liquor license was obtained in the name of Shri Harish Kumar, who is an employee of the assessee. Shri Harish Kumar was not a member of the AOP. Since license fee was paid by the assessee AOP to the Government but the license was in the name of Shri Harish Kumar and not in the name of the assessee, the learned AO concluded that the expenditure cannot be allowed as deduction in the hands of the assessee AOP. There was absolutely no allegation leveled by the learned AO regarding the genuineness of payment of license fees by the assessee or license in the name of Shri Harish Kumar was not genuine or the assessee did not have sufficient sources for making the said payment. This is not the case of the Revenue at all.

4. The assessee submitted that the liquor shop was allotted in the name of Shri Harish Kumar, but by mutual consent, it was run by the assessee and complete sales of the liquor shop in the name of Shri Harish Kumar were duly booked as income in the books of the assessee AOP and the expenses were also incurred by the AOP. License fees paid in cash to the Government had been sought to be disallowed by the learned AO in the assessment. Cash book of the assessee AOP was duly furnished to prove that the license fee has been paid out of its accounted sources from the books of account of the assessee. It is not the case of the Revenue that the payment of license fee was not meant for the purpose of the business of the assessee. The learned CIT(A) had categorically given a finding that the entire purchases and sales of the liquor vend allotted to Shri Harish Kumar was actually the business of the assessee AOP and that Shri Harish Kumar was only a salesman, whose income is below taxable limit and as per remand report of the AO, in Form no. 26AS of last five years of Shri Harish Kumar no tax collected at source (TCS) was made against his PAN, nor any TDS made, nor any refund issued to him. Accordingly, the learned CIT(A) had specifically concluded that the entire business of running the liquor shop was actually the business of the assessee AOP only, though the license was in the name of Shri Harish Kumar. Since the income has been offered by the assessee AOP from the liquor business and assessed as such in the hands of the assessee AOP by the Department, the disallowance of license fee alone cannot be justified. Further, the other direct expenditure and indirect expenditure claimed by the assessee were duly allowed as deduction by the learned AO himself under the head income from business. Hence, there is absolutely no reason for disallowance of license fee alone in the hands of the assessee, merely because the license was in the name of Shri Harish Kumar when entire income is offered to tax by the assessee AOP, which has been accepted by the learned AO also, the action of the learned AO in disallowing the license fee alone is not justified. If the action of the learned AO is to be accepted, then the entire income of vend of liquor shop also should be assessed only in the hands of Shri Harish Kumar and not in the name of the

assessee AOP. With these observations , the original grounds of the Revenue as well as the additional ground of the Revenue are hereby dismissed.

5. In the result, the appeal of the Revenue is hereby dismissed.

Order pronounced in open court on 25.04.2024.

Sd/-
(MS. MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:25.04.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI