

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.4700/Del/2019
Assessment Year: 2015-16

ACIT,
Circle-14(2),
New Delhi.

Vs Kissan Petrol Oils Pvt. Ltd.,
D-10, South Extn., Part II,
New Delhi – 110 002.
PAN: AADCK0136D

CO No.81/Del/2022
(ITA No.4700/Del/2019)
Assessment Year: 2015-16

ITA No.1338/Del/2022
Assessment Year: 2015-16

Kissan Petrol Oils Pvt. Ltd.,
D-10, South Extn., Part II,
New Delhi – 110 002.
PAN: AADCK0136D

Vs. ACIT,
Circle-14(2),
New Delhi

(Appellant)

(Respondent)

Assessee by : Shri S. Krishnan, Advocate
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 26.03.2024
Date of Pronouncement : 31.05.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are cross appeals preferred by the Revenue and the assessee against the order dated 28.02.2019 of the Commissioner of Income Tax

(Appeals)-5, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.5/0217/2017-18 arising out of the appeal before it against the order dated 30.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Circle 14(2), New Delhi (hereinafter referred to as the Ld. AO). The assessee has also filed Cross Objection to the grounds taken by the Revenue in its appeal.

2. Heard and perused the record.

3. At the time of hearing, it was pointed out by the Id. AR that in the appeal of the Revenue the tax effect is low. The Id. DR could not dispute the same. Accordingly, in the light of the CBDT Circular No.17/2019 dated 8th August, 2019 raising the monetary limit for filing of appeal by the Revenue before the Tribunal to Rs.50 lakhs and the Notification dated 20th August, 2019 clarifying that the revised monetary limit so mentioned in the Circular No.17/2019 is applicable even to pending appeals, the appeal in ITA No.4700/Del/2019 is dismissed on the ground of low tax effect. Consequently, Cross Objection filed by the assessee in CO No.81/Del/2022 becomes infructuous and is, accordingly, dismissed.

4. In regard to the appeal of the assessee bearing No.1338/Del/2022, it comes up that the assessment order arises out of the complete scrutiny through CASS and five additions were made by the AO which stand sustained partly by

the CIT(A). The first disallowance pertains to employees benefit expenses. The AO had disallowed employee benefit expenditure of Rs.20,79,544/- and 50% of expenses amounting to Rs.1,49,51,354/-. The CIT(A) had deleted this addition to the extent of Rs.10 lakhs on lumpsum basis on the basis the following findings in paras 5.6 to 7.9:-

“5.6 I have gone through the additional evidences submitted by appellant during appellate proceedings, AO's report and rejoinder as reproduced above.

5.7 Looking to the facts and circumstances of this case where the business of appellant was closed and in order to adhere to the principle of natural justice, the additional evidences were admitted as it goes to the root cause of the additions and to avoid any hardship to the appellant as it is held in various judgment that in such circumstances the additional evidence can be admitted.

6. In ground nos. 1 to 4, the appellant challenged the addition of Rs. 20,79,544/- out of employees benefit expenses. It has been stated that the business activity was carried out for only first quarter of the relevant financial year. It is also stated that gross amount of claim of salary etc. has actually been reduced from the immediately preceding year. Due to the reason that part of the salary has been capitalized towards glycerin plant in the last financial year, the figure for claim of employees benefit is shown less in the last financial year.

6.1 Contention of the appellant has been duly considered. It is a fact that the total employees benefit expenses claimed during the year of Rs. 67,51,639/- is slightly less than the gross claim amount of Rs. 71,09,590/- in the earlier year. Due to the capitalization, the claimed figure for the year under consideration is showing more than the iast year. However, it is observed that there is a decrease in sales in current year to the tune of 82% in comparison to last year and the business activity has not been carried out for the year under consideration, after first quarter.

6.2 Looking to the fact that there is hardly any actual business activity carried out for 9 months, the claim towards salary and wages (50,00,189), director's remuneration (12,00,000) etc. is excessive as the work carried out by such employee and director is not substantiated through any evidence to justify such expenses. In a prudent business practice, when business is not carried out, the expenses towards wages and salary is not found justified to have been incurred for the purpose of business. Similarly,

the remuneration to technical directors is also not justified. However, it is also true that some of the employees are to be retained and permanent cost towards them is to be incurred even if the business is not carried out.

6.3 Accordingly, looking to the facts and circumstances as mentioned above, it is found appropriate to retain disallowance to the extent of Rs. 10,00,000/- on lump sum basis and the remaining addition is allowed. This will meet justice from both the ends. This ground of appeal is partly allowed.

7. In ground nos. 5 to 7, the appellant challenged the 50% disallowance out of total claim, amounting to Rs. 1,49,51,354/-, which was subsequently rectified and enhanced to Rs. 3,83,46,957/-.

7.1 This disallowance has been made due to the non-compliance and in absence of documentary evidence, the veracity of such expenses has not been established.

7.2 While sending the remand report, AO has gone through the additional evidences and clearly pointed out the defects / deficiency and absence of justification for certain expenditure as reproduced earlier. The appellant in its rejoinder have tried to justify the expenditure, as mentioned above.

7.3 With reference to 50% disallowances of purchases it is pointed out by the AO in his remand report that the bills are not matching with the ledger entries for the purchase of raw material, invoices are not stamped properly, some purchases are without invoices and few of the bills seems to be bogus and having no justification. Though appellant tried to justify the same, however, contention of the appellant cannot be considered in full. Further, details were not provided during assessment proceedings.

7.4 Looking to the discrepancies noticed by the AO in the submissions, as pointed out in the remand report, the contention of the appellant cannot be considered as fully justified. Therefore, the disallowances made out of purchases is restricted and sustained to the 50% and the balance 50% is allowed. This will meet justice from both the ends.

7.5 With regard to the disallowance out of other expenses, on the same reasoning that appellant was unable to justify the expenditure looking to the limited business activity and drastic reduction in sales, the disallowance is restricted to 50% and sustained and balance is allowed. This will meet justice from both the ends.

7.6 *With regard to finance cost, it is stated that the appellant took unsecured loans from the Directors and their relatives and interest paid towards that unsecured loan where TDS is also made. The appellant could not produce the justification for such heavy finance cost and also the rate of interest in comparison to the market rates when the lenders are directors and relatives, covered u/s 40A(2)(b). Since the business is almost stopped there is no plausible reason for this interest cost is explained. Therefore, the purpose, justification and comparison with market rate has not been submitted to justify its claim, fully. However, looking to the expenditure incurred, it cannot be denied that part expenses are attributable to finance cost. Therefore, the disallowances is restricted to 50% and sustained accordingly. The balance amount is allowed. This will meet justice from both the ends.*

7.7 *With regard to the depreciation, it is stated by the appellant that audited schedule of fixed assets with depreciation charged during the year is already provided at the time of assessment and no separate details asked for hence, no additional evidence given.*

7.8 *The appellant stated to have provided the schedule of fixed assets / depreciation as audited accounts and no claim / working of depreciation as per Income tax Act has been provided during assessment and appellate proceedings. Accordingly, veracity of claim of depreciation has not been established. No further submission with regard to depreciation has been provided. In any case, the appellant has stated that its business activity was shut after first quarter and therefore appellant is not entitled for depreciation for the full year.*

7.9 *In such circumstance, 50% of disallowance out of claimed depreciation is in accordance with law and no interference is made on the action of AO.*

7.10 *Accordingly, appeal for ground no. 5 to 7 is partly allowed.*

8. *Ground no. 8 is general in nature and hence no separate findings are required.*

9. *In result, appeal is partly allowed.”*

5. As with regard to 50% disallowance of total claim of Rs.1,49,51,354/- of the revenue expenses, the CIT(A) had restricted the disallowance to the extent of 50% with regard to purchases. The disallowance of the remaining expenses

was also restricted to 50%. The disallowance in regard to financial cost was also restricted to 50% and the depreciation was also disallowed by 50% for which the assessee is in appeal raising the following grounds of appeal:-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in sustaining the following adhoc disallowances made by the Assessing Officer

- i. Rs.10,00,000/- on account of employees benefit expenses ;*
- ii. Rs.99,89,145/- on account of purchases;*
- iii. Rs. 18,80,122/- on account of finance cost;*
- iv. Rs. 17,16,656/- on account of other expenses ;*
- v. Rs. 1,11,91,108/- on account of depreciation ;*

The order being arbitrary, fallacious, unlawful and untenable must be quashed with directions for relief.”

6. On hearing both the sides, it comes up that the assessing officer had primarily made the additions on the basis that revenue from the operations had decreased significantly from preceding years. The assessee had admitted that manufacturing activity took place only during the first quarter. The AO observes in the assessment order that the assessee did not produce any documentary evidences i.e., bills and vouchers and even ledger account were not produced and, accordingly, the additions were made. However, before CIT(A) additional evidences were filed taking rescue to Rule 46A which was admitted after a remand report. Copy of the remand report is made available to us at pages 40-51 of the paper book and we have gone through the same. The CIT(A), on the basis of the remand report and additional evidences, has accepted the plea of the assessee that as far as employees benefit expenses are

concerned, in the previous year, there was a work-in-progress of Glycerin plant of Rs.3,15,580/- shown in the audited balance sheet and the employees benefit expenses which include salary of Technical Director, engineers and related staff, EPF, ESIC, staff welfare expenses, etc., out of which Rs.24,37,495/- stood capitalized to capital work-in-progress for self installation of glycerin plant in the factory and in the present year, there was no capitalization done of the employees benefit expenses and capital work-in-progress and the capital work-in-progress is shown at same value during the present year as in the previous year.

7. Then appellant had provided sales register/bills/VAT returns where the sales are tallying with the VAT return ledger for purchases with bills, consumable stores, detail of interest paid along with ITR acknowledgement and computation of income of concerned parties to whom interest was paid as reflected in their accounts, accounts for repairs & maintenance, electricity, insurance, legal and professional charges, security charges, freight, etc. But, without making any conclusive remarks on the shortcomings pointed out by the AO in the remand report, the CIT(A) has sustained the disallowances on lumpsum basis or on ad hoc basis. We are of the considered view that when the assessee had adduced additional evidences which were admitted and on which the AO had given his remand report wherein except for citing minor discrepancies, nothing substantial was found to show that the additional

evidences were in any way false and there is any manipulation in the accounts or vouchers as filed, then, sustaining disallowances on lumpsum basis or ad hoc basis by the CIT(A) is not justified. Accordingly, the ground raised is sustained.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.05.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 31st May, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi