

**।आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "C" :: PUNE**

**BEFORE MS.ASTHA CHANDRA, JUDICIAL
MEMBER AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.576/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10**

Kimberly-Clark Lever Private Limited, GE Plaza, Yerawada, Pune-411006. PAN: AAACK4647E	V s	The Deputy Commissioner of Income-tax, Circle- 11(1), PMT Building, Swargate, Pune.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Hiten Thakkar – AR
Revenue by	Shri Ravi Prakash – DR
Date of hearing	27/06/2024
Date of pronouncement	20/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

In this case the ITAT Pune 'C' bench in ITA 576/PUN/2014 for A.Y.2009-10 had passed an order on 01/11/2021. The assessee filed Miscellaneous Petition MA No.197/PUN/2022 in which it was claimed that Tribunal failed to adjudicate Ground Number 9 raised by the assessee. The ITAT passed an order on 05/06/2023 in M.A. No.197/PUN/2022. ITAT held in M.A.No.197/PUN/2022 that Ground Number 9 raised by the assessee had not been

adjudicated and recalled the order for limited purpose of adjudication of Ground Number 9 of the assessee and directed the registry to fix the case for hearing. Accordingly, the said case was heard for limited purpose of adjudication of Ground Number 9 raised by the assessee.

1.1 The Ground Number 9 is as under :

“Non consideration of the Hon’ble DRP’s direction for granting relief in respect of provision for expenses.”

Erred in not verifying whether the provision for expenses viz IT support of Rs. 48,08,167 and Freight & Handling charges of Rs.16,27,824/-have been made on a scientific basis or on the basis of previous years trends .

Findings and Analysis :

2. We have heard both the parties and perused the records. We here onwards discuss both the issues as under .

Provision for Freight and Material Handling Charges :

3. The assessee had made month end provision of Rs.16,27,824/- towards Freight and material handling charges. Assessee had debited Total Freight and material handling charges of Rs.5,75,71,577/- . The Assessing Officer in the Draft Assessment Order proposed the disallowance of Rs.16,27,824/- which according to the AO was mere a Provision. The Assessee

filed an appeal before the Dispute Resolution panel. The DRP gave following directions :

“2.7.5 We find that the assessee has received invoices in the subsequent year. Therefore, it had to create provision. Otherwise, it could have debited the expenditure on accrual basis. However, in absence of invoices, it is not known as to on what basis such provision was created. Therefore, considering the law laid down by the SC as mentioned above, we direct the learned AO to examine this issue as to on what basis the provision was created by the assessee.

2.7.6 The learned AO shall allow the amount as deduction, if he finds on his examination that the provision was created on scientific basis or on some other concrete basis. However, if the learned AO does not find any such basis for creation of provision, then he is directed to disallow the amount.”

3.1 As per the directions of the DRP the AO asked the assessee to file the details. However, the Assessee filed a reply as under :

“ The provision of Rs.16,27,824/- in respect of freight and material handling charges was made in the books of accounts on an accrual basis .The invoices received from the parties in the subsequent financial year were duly adjusted against aforesaid provision and tax was duly deducted therefrom”

3.2 Considering the reply filed by the assessee, the AO held that it was mere provision, hence disallowed Rs.16,27,824/-.

3.3 During the hearing before this ITAT the ld.AR reiterated the submission made before the AO. The assessee has merely submitted that the provision of Rs.16,27,824/- was made on accrual basis. The invoices were received in subsequent financial year. The assessee was asked to file the basis for making provision

of Rs.16,27,824/-. During the assessment proceedings, assessee has not filed any document to prove the basis on which provision was made. The assessee has not filed any document before ITAT also to prove the basis on which the provision was made. The assessee merely filed a list of entities to whom payments were made in subsequent years. However, that does not prove that services were received from those entities during A.Y.2009-10. Assessee had to establish that the expenditure had accrued. Since it was a provision, assessee was required to prove that provision was made on some scientific basis. Assessee failed to prove the same. In these facts and circumstances of the case, for all the reasons discussed above, we agree with the Assessing Officer that provision of Rs.16,27,824/- is not allowable expenditure.

IT Support Expenses :

4. AO observed that the assessee had debited Rs.1,18,87,748/- on account of IT support expenses. Out of the said amount the AO proposed disallowance of Rs.48,08,167/-. The assessee filed an appeal before the Dispute Resolution Panel. The DRP directed assessee to prove that the provision of Rs.48,08,167/- was made on some scientific basis. However, assessee had not filed any

document to prove the same either before the Assessing Officer or before this Tribunal. Rather, assessee had admitted that the provision was made on estimated basis.

4.1 The relevant submission of the assessee is scanned and reproduced as under :

<p>The monthly IT expenses and IT cost provision forming part of the IT support expenses were accounted for on an accrual basis and no tax was deductible then as the amounts were provided for on an estimated basis and the invoice was received in the subsequent year. Further, tax on the invoice amount was duly deducted and paid on receipt of the invoice.</p>

<p>For details please refer page 24 of Appendix A.</p>

4.2 Thus, the admitted fact is assessee had made the provision on estimated basis. Though the AO has mentioned about TDS being deducted in subsequent year, however, it is just an observation to support that the provision was made on estimation basis, without any scientific support. In these facts and circumstances of the case, since the DRP had given the direction to verify whether provision of Rs.48,08,167/- was made on any scientific basis or not! And we have already observed that no single document has been submitted by assessee to prove that the provision of Rs.48,08,167/- was made on scientific basis. As per Income Tax Act, provisions is not an allowable expenditure, unless it is established that it was made on

some scientific basis as held by the Hon'ble Supreme Court in the case of Bharat Earth Movers Limited vs. Commissioner of Income Tax in Civil Appeal No.9271 of 1995 dated 09.08.2000. In this case, assessee has not filed any document to prove that the provision of Rs.48,08,167/- was made on scientific basis, rather assessee admitted that it was made on estimated basis. In these facts and circumstances of the case, we hold that provision of Rs48,08,167/- is not an allowable expenditure.

4.3 Accordingly, the Ground No.9 raised by assessee is dismissed.

Order pronounced in the open Court on 20th August, 2024.

Sd/-
(MS.ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th August, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.