

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Amit Shukla (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 1621/Mum/2004 (A.Y. 1999-2000)

ACIT, CC-35 Room No. 104 First Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Marico Industries Ltd. Rang Sharda, K.C.Marg Bandra Reclamation Mumbai-400 050. PAN : AADPS3069C
(Appellant)		(Respondent)

Assessee by	Shri Nitesh Joshi & Shri Milin Bakhai
Department by	Shri Ashok Kumar Ambastha
Date of Hearing	13.06.2024
Date of Pronouncement	05.09.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, (a) the learned Assessing Officer (Ld. AO for short) made an addition relating to expenses for recreation which was not supported by the documentary evidences. (b) The Ld. AO made certain additions relating to claim of miscellaneous expenses also. (c) The Ld. AO made a round sum addition of Rs. 5 lakhs from the claim of shortage and leakage expenses claimed by the appellant company. (d) The Ld. AO made certain adjustments relating to deduction u/s. 80HHC of the Income Tax Act (the Act for short) and restricted the claim of deduction. (e) The Ld. AO made certain adjustments relating to deduction claimed by the appellant company under section 80IA of the Act as the appellant company did not furnish quantity-wise details of packing material.

2. The learned Commissioner of Income Tax (the Ld. CIT(A) for short) gave detailed reasoning and deleted the additions made by the Ld. AO on the above issues.

3. Aggrieved by the deletion of the Ld. CIT(A), the Revenue filed an appeal before the ITAT, Mumbai and all the grounds of appeal raised by the Revenue are discussed in detail as below :-

4. Ground No. 1 : disallowance of expenses for recreation, picnic etc.

4.1) The Ld. AO disallowed 10% of the expenditure claimed by the appellant company towards recreation, picnic and miscellaneous expenses. The Ld. CIT(A) considered the scale of operations of the appellant company and various locations from which it operates while carrying on the business and also based on the employees strength held that such adhoc disallowance cannot be made because appellant company filed all the details before the Ld. AO and also that the appellant's accounts were audited. Moreover, the Ld. AO did not find out any mistakes or defects in the maintenance of accounts and hence the Ld. CIT(A) deleted the addition made by the Ld. AO.

4.2) Aggrieved by this deletion of the addition made by the Ld. AO, the Revenue filed an appeal stating that the Ld. CIT(A) is not correct in deleting the above said addition.

4.3) During the hearing before the Bench, no further details nor any fresh submissions were made by the Revenue. Ld. DR has only relied on the order of the Ld. AO.

4.4) Ld. AR of the appellant has argued that there are regular expenses incurred by the appellant company while carrying on its business and no justification was made out by the Revenue before the Hon'ble Tribunal as to how the findings reached by the Ld. CIT(A) are not correct. Ld. AR of the appellant has also relied on the ITAT order in its own case vide ITA No.

2800/Mum/20223 for the proposition that similar adhoc disallowance of Staff expenses in A.Y. 1998-99 was deleted by the Tribunal.

4.5) After hearing both sides, the Bench decides that there is no merit in the arguments of Ld. DR and also there are no valid arguments for the Revenue for making such adhoc disallowance. Hence, the Revenue's appeal on this ground is dismissed.

5. Ground No. 2 : Adhoc disallowance of miscellaneous expenses :

5.1) The Ld. AO made 1/5th of the miscellaneous expenses claimed by the appellant company on adhoc basis. Before the Ld. CIT(A), appellant company has said that these expenses actually comprises of advances given to the parties and unrealised cheques which were effectively written off as old outstanding balances and decided the case in favour of the appellant company as the expenditure is allowable u/s. 37 of the Act.

5.2) Before Hon'ble ITAT, the Revenue has not given any further reasoning for making an adhoc disallowance of 1/5th of total claim of miscellaneous expenses. In view of the above, the Bench decides that the advances written off relates to advances being given in the ordinary course of business for which suppliers have neither provided goods or services nor returned back. Since balances are outstanding for a very long period, the same were written off by the appellant company and hence the amount is deductible. As there is no scientific basis and any evidence for such adhoc disallowance, the addition made by the Ld. AO is deleted.

6. Ground No. 3 : Adhoc disallowance of shortage and leakage expenses.

6.1) The Ld. AO made a lump sum disallowance of Rs. 5 lakhs without giving any valid reason for making such disallowance. The appellant company contends that goods have to travel from manufacturing facility to the depot and from there to the place of distributors. In this process,

wherever there is shortage or leakage, distributor raises a debit note and appellant company treats the same as expenditure. The Ld. CIT(A) deleted the addition because no material was relied upon by the Ld. AO to make this addition.

6.2) Before the Bench, Ld. DR relied upon the assessment order. The Ld. AR of the appellant company has submitted that the said expenditure is natural incident of business carrying on by the appellant company and there is proper check on this expenses as the debit note based on such expenses was booked and raised by the appellant's distributors which in turn would be accepted by the appellant company only after its marketing executive is satisfied with such vouchers.

6.3) After hearing both sides it is decided that the Ld. AO cannot make an adhoc addition without any evidence when all the details were furnished and accounts of the company were audited and hence addition made by the Ld. AO is deleted. The Revenue's appeal is dismissed on this ground.

7. Ground No. 4 : Exclusion of sales tax etc. from total turnover for the purpose of computation of deduction u/s. 80HHC of the Act.

7.1) This issue was discussed at paragraph 6 of the assessment order at page 12 to 14. The Ld. CIT(A) has deleted the addition for various reasons mentioned at paragraph 10 of the Ld. CIT(A) order at page 22. Aggrieved by the deletion made by the Ld. CIT(A), now the Revenue has appealed before Hon'ble ITAT stating that the decision of Hon'ble Bombay High Court in the case of Sudarshan Chemicals Industries Ltd. (supra) was not accepted by the Department and hence the appeal was filed.

7.2) After perusing the material on record, the Bench decides that this issue stands concluded by the decision of Hon'ble Supreme Court in the case of CIT Vs. Laxmi Machine Works 290 ITR 667 and hence the order of the Ld.

CIT(A) is upheld. Accordingly, the addition made by the Ld. AO in this regard is deleted. The Revenue's appeal is dismissed on this issue.

8. Ground No. 5 : Reallocation of expenditure towards packing material for the purposes of computation of profits eligible for deduction u/s. 80IA of the Act.

8.1) In this regard the Ld. AO has primarily referred to the sales turnover at Goa and Kanjikode units of the appellant company vis-à-vis consumption of packing material in comparison to turnover. The Ld. AO made reallocation of expenditure towards packing material at Goa and Kanjikode units and it was reallocated to Goa unit in equalized proportion. The Ld. CIT(A) has held that the cost of packing material has to be charged to each unit on actual basis and reallocation of Kanjikode unit to Goa unit is not required. The Ld. CIT(A) held that emphasis was laid down on the fact that SKU used in different units for different composition. The Ld. CIT(A) held that the Ld. AO cannot reallocate expenditure towards packing material from one unit to another without any basis and only to restrict the deduction u/s. 80IA of the Act. As there is no basis for making any addition, restriction of deduction claimed by the appellant company is incorrect.

8.2) There were no fresh submissions by the Ld. DR before the Bench on this particular issue and Ld. DR relied on the order of the Ld. AO.

8.3) Ld. AR of the appellant has submitted during the course of hearing before the Bench that there can be no question of reallocation of packing material expenditure when the amount was charged on actual basis to each of the undertakings and there is proper documentation while allocating expenditure to each unit. As there was no basis for reallocation of expenditure, Ld. AR of the appellant pleaded that the order of the Ld. CIT(A) may be upheld.

8.4) After hearing both sides, it was decided that there is no basis for reallocating packing material expenses because the Ld. AO has not brought

on record any material or evidence to reallocate of expenses between two eligible units, inter-se on the basis of quantity produced. Moreover, the Ld. AO does not have any material to prove that the appellant company made an attempt to artificially increase the expenses of Goa unit which is eligible for deduction @ 100% by debiting less than the actual expenses and correspondingly decrease the expenses of Kanjikode unit. As the appellant company allocated packing material expenses on the basis of requirement of concerned units and also that the expenditure was actually incurred thereon, the same should not be disturbed. In view of the same, addition made by the Ld. AO is not correct and hence deleted.

9. The appeal of the Revenue is dismissed.

Order pronounced in the open court on 5th September, 2024.

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 05.09.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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