

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.301/Mum/2024
Assessment Year: 2016-17**

Aarav Fragrances And Flavors Private Limited	vs.	ACIT, Circle-1, Thane, Maharashtra
Plot A-152/153, Wagle Industrial Area, Road No. 25, MIDC, Thane (West), Maharashtra-400604.		
PAN: AAGCA 2145 K		
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajesh Athavale
Revenue by : Dr. K.R. Subhash, CIT/DR

Date of Hearing : 01.10.2024
Date of Pronouncement : 09.10.2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

The present appeal is filed by the assessee against order dated 05.12.2023 passed by NFAC, Delhi for Assessment Year 2016-17 on following grounds of appeal:

"i. The learned CIT(A) erred in not directing the assessing officer to allow the amount of INR 15,79,234 written off in the books of account as business expenditure. He erred in not appreciating that although the claim was made by the appellant under the head 'bad debts', it is nothing but the loss, which was incurred. was incidental to the regular business activity carried out by the appellant.

ii. The learned CIT(A) erred in not directing the assessing officer to delete the adhoc disallowance of INR 3,95,526/- made being 20% of INR 19,77,628 of the expenses debited to P & L account under the head staff

welfare expenses, marketing development expenses, conveyance expenses, travelling and conveyance expenses and miscellaneous expenses.

iii. The learned assessing officer erred in levying interest under Sections 234B and 234C of the Income tax Act.

iv. Each one of the above grounds of appeal is without prejudice to the above.

v. The appellant reserves the right to add, alter or amend to the above grounds of appeal.

2. At the outset, the Ld. AR submitted that assessee has filed an application for admission of additional ground on 05/07/2024 reaches as under:

“i. Without prejudice to the Ground No. 1, the learned CIT(A) erred in not directing the Assessing Officer to allow the amount of INR 15,79,234 written off in the books of account as business expenditure under section 29 of the Income Tax Act as they are nothing but the loss, which was incurred and incidental to the regular business activity carried out by the appellant.

ii. Each one of the above grounds of appeal is without prejudice to the above.

iii. The appellant reserves the right to add, alter or amend to the above grounds of appeal.”.

2.1. The Ld.AR submitted that, the additional ground raised by the assessee before this *Tribunal* is an alternative plea which could not be raised due to inadvertence. He further submitted that, this plea was raised in the statement of facts and a specific ground being Ground no.1, before the Ld.CIT(A). The Ld.AR submitted thus prayed for admission of additional ground in the interest of justice.

2.2. The Ld.DR though objected to the admission of additional ground, could not controvert the submissions of the assessee.

We have perused the submissions advanced by both the sides in the right of record placed before us.

2.3. It is noted that the assessee had raised the issue before the Ld. CIT(A) and all necessary evidences in support to consider the issue was very much available on record. The issue raised by the assessee deserves to be considered, in order to determine the correct the computation of income in the hands of the assessee. Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we admit the additional ground raised by the assessee.

Accordingly, the additional grounds filed by assessee stand admitted.

Brief facts of the case are as under:

3. The assessee filed its return of income for A.Y. 2016-17 on 29/11/2016 declaring the total income of Rs.11293450/-. The case was selected for complete scrutiny and in response to notice u/s. 143(2) of the act, details were submitted to the Ld.AO by the assessee. After considering the documents filed by the assessee as called for the Ld.AO passed the assessment order by making the following disallowances:

A. Disallowance of bad debts of Rs.15,79,234.

The assessee had claimed deduction for bad debts business loss amounting to Rs.25,49,851/- in the profit and loss account, for the year the year under consideration. The details of these bad debts were filed before the Ld.AO during the course of assessment proceedings Out of Rs. 25,49,851 Ld.AO disallowed Rs.15,79,234/- by observing that that these debts were not offered to tax in the earlier year, and that they were capital nature. The Ld.AO thus made the disallowance u/s. 36(2) for the Act.

B. Disallowance of Rs. 11,52,48,813/- by reducing the Long term capital loss of Rs. 22,93,47,140/- claimed by the assessee.

The assessee had sold shares in its subsidiary company Ms. Aarav Suisse SA, which is in Switzerland and had shown Long term capital loss of Rs.22,93,47,140/-. The Ld.AO computed long term capital loss of Rs.11,52,48,813 after disallowing the claim of indexation of Rs.11,40,98,327 with a remark that, cost inflation index notified by the Central Govt. Is based on average price index pertaining to Indian economy, and therefore the CII notified by Central Govt. cannot not be made applicable for the shares of company situated in Switzerland. The Ld.AO further noted that for purchase and sale of shares in Switzerland there is hardly any inflation in Switzerland.

C. 20% disallowance out of various expenses amounting to Rs. 3,95,526/-.

The Ld.AO disallowed 20% of expenses incurred in cash of Rs.3,95,526/- considering the same as being unverifiable, and not said to have been laid out or expended wholly and exclusively for the purpose of business of the assessee.

Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

3.1. The Ld.CIT(A) upheld the disallowance made by the Ld.AO in respect of bad debts for non-satisfaction of the condition laid down u/s 36(2) of the Act. He also upheld the the addition in respect of *ad hoc* disallowance of the expenditure at 20%, as not incurred for the purpose of business.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. Ground No.1 raised by the assessee is in respect of the disallowance made u/s.36(2) of the Act.

The Ld.AR has filed the summary of the disallowance that was written off amounting to Rs. 15,79,234/-, the details of which are as under:

4.1. He submitted that during the Financial Year 2012-13 relevant to Assessment Year 2013-14, certain advances were made to M/s.Nimbus India, M/s.Archis Agro Services, M/s.Givudan International, SA & M/s.Urmi Chemicals, the details are explained by the Ld.AR as under:

I. It is submitted that, the advances made to M/s.Nimbus India were for supply and fixing up the hoist type goods lift in factory at Wada. The Ld.AR submitted the supplier neither did supply the lift nor returned the advance and, therefore, was not recoverable for several years. The Ld.AR further submitted that, the factory at Wada has been shut down on various reasons and, therefore, though it was in the nature of business expenditure which was incurred for the purposes of business exigencies, it was not nomenclature in the books of account as bad debts and was claimed during the year under consideration.

II. In respect of the payment of advance made to M/s.Archis Agro Services, the Ld.AR submitted that, it was towards development of garden within the factory premises. It is submitted that this payment was incurred for maintenance and development and maintenance of the garden on regular basis within the factory premises, which was not properly carried out by the service provider.

III. In respect to the payment made towards M/s.Urmi Chemicals, the Ld.AR submitted that this was made for supply of raw materials in the Financial Year 2010-11. He submitted that the

vendor short supplied the raw materials to the extent of Rs.19,405/-. It was submitted that, neither did the vendor completed the supply as per the requirement, nor any refund to the extent of short supply was made. The Ld.AR submitted that, the assessee accordingly wrote off the amount as it was in the nature of business expenditure incurred exclusively for the purpose of business.

4.2. The Ld.AR submitted that the assessee had to incurred sum of Rs. 15,315/- to M/s. Givudan International, being the difference in rate of foreign exchange for supply of raw materials. He submitted that this was an exchange loss on account of trading and was also business expenditure incurred wholly and exclusively for the purposes of business which was wrongly nomenclated under bad debts.

4.3. The Ld.AR placing reliance on the decision of *Hon'ble Bombay High Court* in case of *CIT vs R.B. Rungta & Co.* reported in 50 ITR 233 submitted that *Hon'ble Court* has observed that, “a wrong lable attached to the claim of assessee, would not disentitle the assessee from getting relief under proper head, since all the necessary facts necessary for treating the claim under that head had been already stated by the assessee and no further investigation into any fresh fact found to be necessary to give the assessee the said relief”. He further submitted that, admittedly the assessee wrongly nomenclated all the above expenditure as bad debts instead of claiming it as expenditure u/s 37(1) of the Act. However all necessary documents and relevant ledger accounts,

and profit and loss account were available with the authorities below, which was not considered in proper perspective.

4.4. He submitted that, the only reason for disallowance being made by the Ld.AO/NFAC is, non-satisfaction of the conditions u/s 36(1)(vii) as well as section 36(2) of the Act. He submitted that the alternative plea of treating the above expenses, either as business expenditure or granting the same as business loss was also not verified by the Ld.CIT(A), though as specific ground was raised in ground no. 1, and detailed submission was provided in the statement of facts. Before the Ld.CIT(A), it was submitted that there is no contrary observation of the Ld.AO in respect of these expenditure being not in the nature of business exigencies may be allowed as a business expenditure. The Ld.AR thus prayed for the claim to be considered under section 37(1) in order to compute the correct tax in the hands of the assessee.

4.5. On the contrary, the Ld.DR submitted that the claim of assessee regarding these expenditure to be in the nature of business exigency has not been verified by the authorities below. He thus submitted the issue may be remanded for necessary verification.

We have perused the submission advanced by both sides in the light of the records placed before us.

4.6. On perusal of the assessment order, it is very clear that all the details necessary to verify the relevant fact in respect of this expenditure claimed by the assessee was available before the

Ld.AO. However, the Ld.AO proceeded to verify the requirement as per section 36(1)(vii) and 36(2) of the Act, for the reason that the assessee nomenclated these expenditure to be bad debt.

4.7. Before the Ld.CIT(A), the assessee raised the contention of considering this expenditure to be business expenditure which has not been verified by the Ld.CIT(A). We note that, there is no allegation on behalf of the authorities below regarding these expenditure to be not genuine. The Ld.CIT(A) has not disposed of Ground no.1 in toto, which has caused prejudice to the assessee. We therefore remand this issue to Ld.CIT(A) to verify these expenditure and to consider the claim of assessee in accordance with law. It may be noted that once it is determined to have been incurred for the purpose of assessee's business, and that, it was wrongly claimed as bad debts, no disallowance can be made any further and assessee has to be granted benefit under the relevant provision of the Act. The assessee is directed to file all the relevant document in support of the expenditure before the Ld.CIT(A). The Ld.CIT(A) is directed to verify the same and pass a detailed order on merits. Needless to say the proper opportunity of being heard must be granted to the assessee

Accordingly, we allow the additional ground raised by the assessee and ground no 1 raised by the assessee is kept open.

5. Ground no. 2 is in respect of the *ad hoc* disallowance sustained by the Ld.CIT(A) debited in the P & L A/c under the head staff welfare expenses, marketing development expenses, conveyance

expenses, travelling and conveyance expenses and miscellaneous expenses.

5.1. The Ld.AR submitted that the assessee has been regularly auditing the books of accounts under the Companies Act and all the expenses which fully supported by vouchers and other documents necessary to verify its nature. He submitted that the Ld.AO made an *ad hoc* disallowance of 20% of the total expenditure without considering the inflation. He submitted that 20% disallowance is on higher side, considering the fact that there cannot be any presumption of personal expenditure that could have been incurred under some of the head by the assessee. However, the Ld.AR thus left the issue to the wisdom of this bench to be considered appropriately.

5.2. On the contrary, the Ld.DR submitted that the order passed by the authorities below.

We have perused the submission advanced by both sides in the light of the records placed before us.

5.3. It is not denied that there is no personal expenditure embedded in the form of marketing development expenses, conveyance expenses, travelling and conveyance expenses and miscellaneous expenses claimed by the assessee that is incurred in cash. It is also submitted that except for self made vouchers, there are no other evidence to support the claim of the assessee. However, the rate of disallowance adopted by the Ld.AO does not have any basis and is on a higher side. We therefore restrict the

disallowance to the extent of 10% and direct the Ld.AO to compute the disallowance accordingly.

Accordingly, ground no. 2 raised by the assessee stands partly allowed.

6. Ground no. 3 raised by the assessee is consequential in nature. **Ground no. 4 & 5** is general in nature and, therefore, do not require adjudication.

In the result, appeal filed by the assessee is stands partly allowed.

Order pronounced in the open court on 09/10/2024.

Sd/-

sd/-

**(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**(BEENA PILLAI)
JUDICIAL MEMBER**

Mumbai,
Dated: 09.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

1. Date of Dictation.....
2. Date on which the typed order is placed before the dictating Member and other Member.....
3. Date on which the order came back to Sr. PS.....
4. Date on which file goes to the Bench Clerk.....
5. Date of which the file goes to the O.S.....
6. Date of dispatch of the order.....