

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.181/Ahd/2023  
(Assessment Year: 2016-17)

Rushil Décor Ltd., Rushil House Off Sindhu Bhavan Road Shilaj, Ahmedabad-380058	Vs.	Assistant Commissioner of Income Tax, Circle-3(1)(2), Ahmedabad
[PAN No.AABCR3005N]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
<b>Respondent by:</b>	Shri Rignesh Das, Sr. DR

<b>Date of Hearing</b>	07.10.2024
<b>Date of Pronouncement</b>	18.11.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), Ahmedabad vide order dated 08.02.2023 passed for A.Y. 2016-17.

2. The Assessee has taken the following grounds of appeal:-

“1. The learned CIT(A) has erred in law and on facts in confirming the disallowance of Rs.38,18,487/- (Rs.15,97,187/- + Rs.22,21,300/-) on account of expenses u/s. 37 of the Act in spite of necessary evidences placed on record.

2. The learned CIT(A) and the Ld. AO have erred in law and on facts in not considering bills, invoices and vouchers submitted by the Appellant and consequently making part disallowances, which is in violation of the principles of natural justice.

3. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

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4. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s.234A/B/C of the Act.*

5. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s.271(1)(c) of the Act.*

6. *The appellant craves leave to add, amend, alter, edit, delete modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."*

3. The brief facts of the case are that assessee, a manufacturer of laminates and allied products, incurred sales promotion expenses amounting to Rs. 48,28,256/- during the assessment year (AY) 2016-17. These expenses were grouped under the head "Sales Commission," which amounted to Rs. 5,11,70,910/- in total. The case of the assessee was selected for scrutiny assessment by the tax authorities. In response to the notice issued by the Assessing Officer, the assessee provided several submissions. On 17<sup>th</sup> October 2018, the assessee submitted various details, including the "ledger" for sales commission expenses. Subsequently, vide submission dated 13<sup>th</sup> November 2018, the assessee clarified that the sales promotion expenses of Rs. 48,28,256/- had been erroneously grouped under the head "sales commission expenses." Vide submission dated 14<sup>th</sup> December 2018, the assessee submitted that the grouping error was due to a clerical mistake. The sales promotion expenses had been mistakenly categorized under sales commission while submitting the details of the sales commission expenses. This mistake became apparent to the assessee only when the AO requested specific information about the sales commission. Further, vide submission dated 24<sup>th</sup> December 2018, the assessee provided the AO with the major vouchers related to the sales promotion expenses, including the "ledger" for these expenses and the relevant invoices. The vouchers were submitted as evidence to support the claim for sales promotion expenses. Vide letter dated 27<sup>th</sup> December 2018, the assessee also provided details regarding the deduction of TDS (Tax Deducted at

Source) on sales promotion expenses, along with an annexure containing further details. However, the AO disallowed the entire amount of Rs. 48,28,256/- claimed under the head “sales promotion expenses” for the following reasons:

1. The assessee had only provided the "ledger" of sales promotion expenses but failed to submit original bills, invoices, or vouchers to substantiate the claim.
  2. A significant portion of the expenses was spent on stationery items, which the AO considered unrelated to sales promotion activities and, therefore, not eligible for deduction.
  3. The AO found it unacceptable that sales promotion expenses were grouped under the head "sales commission expenses," which the AO deemed improper.
  4. The assessee had made provisions for certain expenses, including Rs. 19,21,000/- for an annual discount scheme and Rs. 3,01,300/- for credit notes, totaling to Rs. 22,21,300/-. These provisions were disallowed by the AO as they did not represent actual expenditures and were, therefore, not deductible.
4. The matter was subsequently taken to the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) partially allowed the assessee's appeal. The CIT(A) deleted Rs. 10,08,769/- from the total disallowed amount, as the assessee had provided vouchers to substantiate this portion of the claim. However, the CIT(A) confirmed the disallowance of the remaining sum of Rs.15,25,187/- (which should actually be Rs.15,97,187/-). Additionally, the CIT(A) upheld the AO's decision to disallow the Rs. 22,21,300/- in respect of “provisions” related to the annual discount scheme and credit notes. Accordingly, the CIT(A) gave partial relief to the assessee

by allowing a portion of the sales promotion expenses but confirmed the disallowance of the remaining expenses and provisions as per the AO's assessment.

5. The assessee is in appeal before us against the order passed by Ld. CIT(A). Regarding the disallowance of Rs. 15,97,187/- the Counsel for the assessee submitted that the assessee contested the disallowance of sales promotion expenses amounting to Rs. 48,28,256/- during the assessment year 2016-17. While the Assessing Officer (AO) had disallowed the entire amount, the Commissioner of Income Tax (Appeals) had partially allowed the claim. The CIT(A) deleted Rs. 10,08,769/-, representing expenses for which the assessee had provided the requisite bills and invoices. However, the matter of the allowability of other expenses, such as those for stationery etc. was not disputed under section 37 of the Income Tax Act, 1961. The counsel for the assessee argued that the AO had completely overlooked the major vouchers that were submitted as part of the record. These vouchers, according to the counsel for the assessee, were placed on a "sampling basis" to demonstrate the legitimacy of the sales promotion expenses. However, the AO had failed to recognize these vouchers, leading to the disallowance of the entire sales promotion expenses amount. Furthermore, the CIT(A) did not request the assessee to provide vouchers for the remaining balance of the disallowed sum. In this regard, the counsel for the assessee pointed out that the vouchers submitted were sufficient to substantiate the claim, and thus, a holistic view of the case should be taken. The assessee also highlighted the relative insignificance of the expenses disallowed in the context of the company's total revenue. The "revenue from operations" of the assessee company for the year under consideration were Rs. 320.51 crore, and the disputed sales promotion expenses of Rs. 15,97,897/- represented only 0.05% of this revenue. Therefore, it was submitted that even from a materiality perspective, such a small percentage of the total

revenue did not warrant the disallowance of the entire sum. The counsel for the assessee further contended that the conditions prescribed under section 37 of the Income Tax Act, which governs the deductibility of business expenses, were duly fulfilled by the assessee. The fact that the CIT(A) had deleted part of the addition (Rs. 10,08,769/-) indicated that the expenses were legitimate, and thus, the entire disallowance should be reversed. It was submitted that all payments had been made by cheque and there was no allegation of any payments having made in cash. The counsel for the assessee submitted that under these circumstances, no further disallowance was justified, and alternatively, if some amount was to be disallowed, it should be a token amount, rather than the entire sum. In summary, with regards to the aforesaid disallowance, the counsel for the assessee that the sales promotion expenses were valid business expenditures that met the requirements of section 37 of the Act. Given that part of the disallowance had already been deleted by the CIT(A), the entire addition should have been deleted. The counsel for the assessee emphasized that the disallowance was disproportionate to the size of the company's total revenue and the materiality of the expenses in question.

6. With regards to the addition of Rs. 22,21,300/-, the counsel for the assessee submitted that the same was concerning provisions for "Annual Discount Scheme" (Rs. 19,21,000/-) and "Credit Note to be booked" (Rs. 3,01,300/-). The counsel for the assessee gave reference to page 144 of the paper book (P/B), to substantiate the creation of these provisions. The counsel for the assessee argued on the applicability of section 145 of the Income Tax Act, which governs the method of accounting for the computation of income under the head "Profits and Gains of Business or Profession" (PGBP) or "Income from Other Sources" (IFOS). The counsel for the assessee submitted that according to Section 145 of the Act, these incomes must be computed using either the cash or mercantile system of

accounting, as regularly employed by the assessee. The assessee, being a company, was bound by the provisions of the Companies Act, specifically Sections 128 and 129, which mandate the use of the "accrual system of accounting." Under the mercantile system of accounting, the concept of "accrual of liability" is integral. This means that liabilities that are incurred during the year, even if they are not paid in the same period, must be accounted for in the books. In the case of the assessee, the provisions made for the annual discount scheme and credit notes to be booked were in line with this accounting practice. The provision of Rs. 19,21,000/- for the "annual discount scheme" and Rs. 3,01,300/- for "credit notes" were created based on past experience of the company, as it was customary for such expenses to arise in the ordinary course of business. The counsel for the assessee contended that the provisions were created for "routine business expenses," which would be incurred in the following year. It was pointed out that while the actual bills for these expenses and the payments would occur in the subsequent year, the provision was necessary to ensure the accounts reflected a "true and fair picture." The provision, in the assessee's view, was merely a way to account for future expenses based on past experience, and the nomenclature used, "provision," did not alter the fact that these were genuine anticipated business expenses. The assessee further argued that the creation of such provisions was a prudent commercial decision, as it allowed for a more accurate depiction of the company's financial position. Therefore, these provisions should be considered "allowable" under Section 37 of the Income Tax Act, which deals with the deduction of business expenses. The "Revenue from operations" for the year amounted to Rs. 320.51 crore, and the total provision of Rs. 22,21,300/- represented only 0.07% of the total revenue. From the materiality perspective, the assessee contended that such a small percentage of the revenue did not justify any disallowance of the provision.

It was further submitted that actual expenses were not claimed by the assessee company, but were debited to the “provision” account, thereby making it a tax neutral exercise. In conclusion, the counsel for the assessee argued that the provisions for the “annual discount scheme” and “credit notes” were reasonable, necessary, and in accordance with the applicable accounting standards. Given that these provisions were made for future business expenses based on past experience, and that their material impact on the company's total revenue was negligible, the assessee urged that the entire addition of Rs. 22,21,300/- should be deleted.

7. In response, Ld. Departmental Representative placed reliance on the order passed by Ld. CIT(A).

8. We have heard the rival contentions and perused the material on record. In our considered view, given the arguments of the counsel for the assessee, looking into the turnover of the assessee company and the aforesaid disallowances constituting a small percentage of the turnover of the assessee company, looking into the fact that with regards to first disallowance there is no allegation of any expenses having been incurred in cash and the fact that Ld. CIT(A) also did not ask the assessee to produce the balance invoices before confirming the addition, we are of the considered view that in light of the assessee's facts for this assessment year, no disallowance is called for.

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

<b>This Order pronounced in Open Court on</b>	<b>18/11/2024</b>
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Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 18/11/2024  
TANMAY, Sr. PS

Sd/-  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**TRUE COPY**

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,  
Ahmedabad
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad