



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.414/LKW/2024
Assessment Year: 2013-14

M/s Sadana Electric Store 59, chander Nagar Market Alambagh, Lucknow	v.	Dy. CIT Range – 6 Lucknow
TAN/PAN:AAMFS5053M		
(Appellant)		(Respondent)

Appellant by:	Shri D.D. Chopra, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	19	09	2024
Date of pronouncement:	19	11	2024

ORDER

This appeal has been preferred by the assessee against the order dated 01.05.2024, passed by the Id. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi for Assessment Year 2013-14.

2. The brief facts of the case are that the assessee is a registered partnership firm dealing in retail trading of Electrical goods. The assessee e-filed its return of income for the year under consideration on 13.11.2014, declaring a total income of Rs.10,00,590/-. The case of the assessee was selected for scrutiny under CASS. During the course of assessment proceedings, the Assessing Officer (AO), on examination of the books of account, bills and vouchers of the assessee, noticed that

the assessee had debited a sum of Rs.35,70,711/- as expenses under the head 'wages'. The AO observed that these expenses were in cash and were supported by only handmade vouchers and further muster rolls & attendance registers had not been maintained and that only labour payment register had been maintained by the assessee, and thus, the expenses under the head 'wages' were not open for verification. He, therefore, disallowed 5% of Rs.35,70,711/-, which came to Rs.1,78,536/- and added the same to the income of the assessee.

3. Likewise, the AO also disallowed 10% of the expenses claimed under the heads (i) Advertisement & Publicity, (ii) Business Promotion, (iii) Commission on Sales, (iv) Car Running, (v) Delivery Van running and maintenance, (vi) Miscellaneous, (vii) Service and Maintenance, (viii) Telephone, (ix) Repairs to Building and (x) Vehicle running and maintenance, which came to Rs.3,83,036/- and added the same to the income of the assessee.

4. The AO, accordingly, completed the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter called "the Act") at a total income of Rs.15,42,160/-.

5. Aggrieved, the assessee preferred an appeal before the 1d. First Appellate Authority. The case was migrated to NFAC, who partly allowed the appeal of the assessee.

6. Now, the assessee has approached this Tribunal challenging the action of the NFAC by raising the following grounds of appeal:

A. Because the learned Commissioner of Income Tax (Appeals) appeals had grossly erred in allowing the appeal in part while completely ignoring that the expenses claimed before the Assessing Officer are all business expenses that are fully vouched and the addition made by the learned Assessing Officer and upheld by the learned CIT(A) are without cogent reason.

B. Because the learned Commissioner of Income Tax (Appeal) has further failed to appreciate that the Assessing Officer has error on not accepting the claimed expenses that are based on books of account at the end of the year and has further ignored that the book results shown by the Assessee are much progressive in comparison to the preceding year. Even from the reading of Assessment Order it is evident that the appellant had produced vouchers towards the expenses claimed which were however not fully accepted by the Assessing officer on the ground that the same were "unverifiable self-made voucher".

C. Because the Commissioner of Income Tax (Appeal) has failed to appreciate that it is well settled law that the Assessing Officer is required to consider the prevailing

circumstances and history of the assess before rejecting books of accounts which has not been done by the Assessing Officer in this case.

D. Because learned CIT(A) has erred in not allowing the claim of salary paid in full as the salary expenses are necessary expenses and they are paid in cash to casual employees who are employed only during the festive season.

E. Because the learned CIT(A) has grossly erred in upholding the disallowance Rs.1,09,534.00 towards Commission expenses on the ground of absence of any details furnished by the Appellant during the assessment proceedings. The above expenses that have been allowed in preceding year, have increased this year because of surge in turnover of the Appellant firm.

F. Because the learned CIT(A) has grossly erred in upholding the disallowance of Rs.8,21,55.00 towards Miscellaneous expenses that have been incurred for the purpose of business only, without appreciating the facts and merely relying on the order passed by the Assessing Officer.

G. Because the learned CIT(A) had erred in upholding the disallowance of Rs.3,31,884.00 under the head Service and Maintenance Expenses as made by the Assessing Officer without considering the explanation as provided by the Appellant.

H. Because the learned CIT (A) has erred in upholding the disallowance of telephone expenses of Rs.2,89,050/- on account of personal use of telephone as decided by the Assessing Officer during the assessment proceedings. However, it is submitted that the increase in expenditure is

on account of opening three new branches. All the bills have been paid by cheque and therefore can be easily verified.

I. Because the learned Commissioner of Income Tax (Appeals) has upheld the disallowance of Rs.6,64,165/- towards Repair to Building Expenses on the ground that the Assessee did not file any evidence so as to claim it as revenue expenditure and merely filed ledged copy of account which does not prove the same.

J. Because the learned Assessing Officer has disallowed 10% of different heads i.e. Advertisement & Publicity Expenses, Business promotion Expenses, Commission on Sales Expenses, Car Running Expenses, Delivery Van Running and Maintenance Expenses, Misc. Expenses, Service and Maintenance expenses, Telephone Expenses, Repairs to Building Expenses and Vehicle Running and Maintenance Expenses. The learned CIT(A) has allowed relief only under the head Advertising and Publicity and under the head Delivery Van Running Expenses and has allowed only partial relief under the head Salary and the disallowance under the remaining heads have been upheld by the learned CIT(A).

7. The Ld. Authorized Representative for the assessee (Ld. A.R.) submitted before me that all the relevant details had been filed before the AO and that the assessee had been following a regular system of accounting, but even then ad-hoc additions/ disallowances had been made to cover up for alleged possible

leakage, without giving any specific instance of any discrepancy in the books of account.

7.1 The Ld. A.R. submitted that the AO had made disallowance under the head 'Salary' to the tune of Rs.1,78,360/- on the allegation that most of the salary was paid in cash and that such expenses were supported by handmade vouchers and also that Muster Rolls and Attendance Register had not been maintained. It was further submitted that the Ld. First Appellate Authority restricted the disallowance to Rs.32,096/- being payment made in cash. The Ld. A.R. argued that the Ld. First Appellate Authority had erred in not allowing the claim of salary in full, as salary expenses were necessary expenses and some salary expenses have to be necessarily incurred in cash being payment to casual employees, who are employed only during the festive seasons.

7.2 With respect to disallowance under the head 'Business Promotion Expenses', it was submitted that the total expenditure claimed during the year was to the tune of Rs.3,42,068/- being 0.13% of the total turnover. It was submitted that the reason for increase in expenditure on this account was due to the fact that three new branches of the assessee-firm had been opened during the year and further, during Deepawali season, the assessee had

introduced a business promotion scheme, under which any customer, making a purchase of Rs.7,000/- or above, would qualify to participate in Lucky Draw Scheme to win a Hyundai Eon Car, worth Rs.2.65 lakhs. It was submitted that the business promotion scheme was a success inasmuch as the same is evidenced by increased turnover during the year under consideration. It was also submitted that the Car was delivered to the winner after due deduction of tax at source, which amounted to Rs.79,500/- and the remaining amount of Rs.77,068/- was spent on promoting this promotion scheme. The Ld. A.R. argued that the Ld. First Appellate Authority had wrongly upheld the disallowance because the quantum of expenditure was justified looking at the number of branches of the assessee as well as increased turnover. It was also submitted that during the immediately preceding year, no disallowance had been made by the Department on this account.

7.3 Similarly, with respect to disallowance under the head "Commission", it was submitted by the Ld. A.R. that the amount of expenditure claimed was Rs.1,09,534/- and the said amount was paid to persons who had introduced new clients during the year and which had also resulted in increased sales. It was further submitted that the Ld. First Appellate Authority had

grossly erred in upholding the said disallowance on the ground of absence of any details furnished by the assessee.

7.4 Similarly, with respect to disallowance of Rs.82,155/- on account of Miscellaneous expenses, the Ld. A.R. submitted that these expenses had also been incurred for the purpose of business and had been allowed in full during the immediately preceding year. The Ld. A.R. argued that the disallowance of 10% of such expenses without assigning any specific reason was not permissible in law.

7.5 Again, with respect to addition of Rs.3,31,884/- under the head "Service and Maintenance Expenses", the Ld. A.R. submitted that these expenses were incurred towards installation of various appliances purchased by the customers from various showrooms of the assessee. It was submitted that during the year, the assessee had incurred an amount of Rs.24,43,201/- under this head and had received reimbursement of Rs.21,11,317/- from its customers/manufacturers and the balance amount of Rs.3,31,884/- had been claimed as expenditure having been incurred by the assessee. The Ld. A.R. submitted that in the preceding year also, this type of expenditure had been allowed in full and that the Ld. First

Appellate Authority had erred in upholding this disallowance without considering the explanation furnished by the assessee.

7.6 With respect to disallowance of Rs.2,89,0505/- incurred towards Telephone expenses, it was submitted that the increase in telephone expenditure was again on account of opening of three new branches and further all the expenditures incurred had been paid through cheques, which was verifiable from the bank account.

7.7 Similarly, with respect to addition on account of “Repair to Building Expenses”, the Ld. A.R. submitted that the assessee had incurred expenditure of Rs.6,64,165/- on this account. It was submitted that this amount had been incurred towards renovation of the showroom and it was also to be noted that all the five branches of the assessee were located in rented premises and, therefore, showrooms required to be renovated every year and that these were necessary business expenses and, hence, upholding the disallowance was not proper.

7.8 The Ld. A.R. prayed that accordingly, in view of the submissions made and keeping in view the past history of the assessee, the ad-hoc disallowances under challenge need to be completely deleted.

8. The Ld. Sr. D.R. placed reliance on the order of the NFAC and referred to paragraph 5.2.5 of the order of the NFAC and submitted that adequate relief has already been allowed by the NFAC, and therefore, no interference was called for in the order of the NFAC.

9. I have heard both the parties and have also gone through the records. It is seen that all the disallowances in dispute have been made on an ad-hoc basis by the AO without pointing out any specific instance with respect to any of the expenses being disallowed. I am in agreement with the contention of the Ld. A.R. that ad-hoc disallowances, without pointing out any specific instance and for the general reason of covering any possible revenue leakage, cannot be upheld. There have been innumerable orders of this Tribunal where such ad-hoc disallowances were held to be bad in law. The assessee cannot be put to pay increased tax demand only on account of presumption that there could have been possible revenue leakage, especially when the assessee has duly offered explanations regarding each and every expenditure under dispute. In my considered view, both the lower authorities have not given due weightage to the explanations offered by the assessee and have rather proceeded in a hasty manner to first make the disallowances and then uphold such disallowances.

Therefore, in the absence of any specific finding, ad-hoc disallowances in appeal before this Tribunal (that is as sustained by the Ld. First Appellate Authority), cannot be held to be justified and therefore, I set aside the order of the NFAC and direct the AO to delete all the disallowances.

10. In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 19/11/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:19/11/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar