

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 428/Mum/2024
Assessment Year : 2011-12

ITO-14(1)(1), Aayakar Bhavan, M.K. Road, Mumbai.	vs.	AMO Communications Private Limited, Ashok Steel Building, 1 st Floor, Amar Brass Compound, 159, CST Road, Kalina, Santacruz (East), Mumbai PAN : AADCA0247K
(Appellant)		(Respondent)

For Assessee :	Shri Kiran Kapadia
For Revenue :	Shri Akshay Tapdiya, Sr.DR

Date of Hearing :	21-11-2024
Date of Pronouncement :	02-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dt. 01-12-2023 passed by the Ld.Addl/JCIT(A)-5, Kolkata and it relates to the Assessment Year (AY.) 2011-12. The Revenue is aggrieved by the decision of the Ld.Addl/JCIT(A) in granting relief in respect of disallowances expenses relating to purchase of goods and services and payment of management fees.

2. The facts relating to the case are stated in brief. The assessee is carrying on the business of advertising. During the course of scrutiny proceedings, the assessing officer examined the expenses claimed towards purchase of goods and services from some of the suppliers. According to the AO, he has deputed an Inspector to verify the following suppliers of goods and services:-

- i. M/s. Dev Creations
- ii. M/s. Paramount Advertising
- iii. M/s. Sunrise Advertising Associates
- iv. M/s. Kushi Ad Productions
- v. M/s. Jarden Consumer Solutions (I) Pvt. Ltd.,
- vi. M/s. R2D2
- vii. M/s. Time production

According to AO, the Inspector had reported that he could not find the above said persons at the given addresses. Hence the AO doubted the existence of above said suppliers. According to the AO, the assessee did not produce the Books of Account for verification, did not furnish any details in support of purchases and did not produce these parties for verification. Hence, he treated the payments made to the above said persons aggregating to Rs.1,28,43,115/- as bogus in nature and accordingly added the same to the total income of the assessee. The AO also noticed that the assessee has paid management fee of Rs. 80 lakhs to M/s. Percept Ltd. Though the assessee furnished all the evidences in support of the above said payment, yet the AO disallowed the same on the reasoning that the assessee did not produce the authorized person from M/s. Percept Ltd., and also did not furnish confirmation and copy of agreement, MoU etc.

3. The assessee challenged both these additions before the Ld.CIT(A), who deleted both these disallowances. Hence the revenue is aggrieved.

4. We have heard the parties and perused the record. The first issue relates to the disallowance of expenses relating to purchase of goods and services. We notice that the Ld CIT(A) has given a finding that the assessee has purchased goods and services from the above said parties only to the tune of Rs.65,10,107/-. He has also noticed that the addition has been made by the AO on the basis of ledger account of above said parties and he has also added credit balance of Rs.27,67,278/- standing in the name of M/s Jarden Consumers Solution (India) P Ltd. Admittedly, the expenditure claim will always represents debit balance and the credit balance could not have been considered by the AO for making disallowance as expenditure. Further, we notice that the AO has primarily relied upon the inspector's report in order to come to the conclusion that the above said suppliers are bogus, only for the reason that the Inspector could not locate the parties at the given addresses. It was submitted that the copy of inspector's report was not provided to the assessee. We notice that the assessee has asked for cross examining the Inspector, but the AO did not provide that opportunity. The ld CIT(A), on the contrary, noticed that all the expenses are supported by proper evidences. Accordingly, he deleted this disallowance.

5. We notice that the Ld CIT(A) has deleted this addition after examining it on legal perspective. For the sake of convenience, we extract below the relevant observations made by Ld CIT(A) on this issue:-

“VI. DECISION:

I have gone through the assessment order passed by Assessing Officer (AO) and details of submission given by appellant on these issues.

The fact of the case is AO had made addition on the basis of the inspector report that some entities to whom appellant had made the payments were not available in the given address. The addition made of Rs. 1,28,43,115/-Appellant argued that it has indeed received services from them and furnished all books of accounts in support of expenditure.

It is seen that in the instant case substantial addition was made by AO solely on the basis of Inspectors report. Further, AO had only verified one aspect of expenditure that is verifying the availability of parties in the given address, however AO has not verified whether appellant had in deed received the services from these parties or not, whether these parties genuinely did business or not etc.

Further appellant had submitted details of cash book, bank book, inward register, outward register, audit copies, bills, vouchers etc before AO. The details of paper book submitted by appellant is also perused. It is seen that AO has not questioned or found any infirmities in books of accounts. There is not a single instance where AO had investigated and discovered that the bills/vouchers raised by six parties are not congruence with cash book/bank book.

Further appellant submitted that, all the six parties were registered with sales tax departments as well as service tax department and had issued their regular invoice, depicting their PAN, registration numbers under sales tax laws and service tax laws and also collecting VAT and service tax, whenever applicable. In other words, the parties had collected sales tax/ service tax from the Appellant and had paid the same to the government. The Appellant had filed full ledger account of each of these parties, along with the corresponding Journal Vouchers and the Invoice issued for each transaction.

However, AO had not verified the genuineness of business of six parties from sales tax department, or their income tax return, or TDS details from TDS authorities. There were no query or investigation by AO to get the information from these authorities.

Further, it is seen that the ledger balance available in ledger copies of six parties are taken to arrive at the figure of Rs. 1,28,43,115/-.However, AO has not exercised due diligence to check whether it was credit balance or debit balance. The A.O.

had added an amount of Rs. 27,67,278/- in the name of M/s. Jarden Consumers Solution (India) P. Ltd. This amount, in fact, represents the amount received by the Appellant from the said company and not an amount spent by the company. It indicates that assessment was being completed and hasty conclusions were drawn without proper verification and exercise of due diligence.

Action of AO solely based on the report of the Inspector without giving an opportunity to the assessee to explain the alleged information, is not correct is held by Hon'ble High Court of Calcutta in the case of I.T.A. No. 175 of 2003 S. K. Bothra & Sons, HUF Vs Income Tax Officer, Ward-46(3), Kolkata.

In the instant case, a substantive addition made by AO based on the inspector report, without verifying the genuineness of business transaction and without making adequate enquiry as elaborated above. Therefore, this addition made by AO is liable to be rejected.

In the result, Appeal filed by appellant on this ground is allowed.”

We notice from the decision rendered by Ld CIT(A) and also discussions made by us that the AO has made this addition in a casual manner without adhering to the principles of natural justice. The AO could not have made the addition on the basis of material collected behind the back of the assessee without confronting the same with the assessee. On the contrary, we notice that the Ld CIT(A) has given a clear finding that the assessee has furnished all the relevant evidences in support of the claim of expenditure. In view of the above, we do not find any infirmity in the order passed by Ld CIT(A) on this issue.

6. The next issue relates to the disallowance of management fee of Rs.80.00 lakhs paid to M/s Percept Ltd. The Ld A.R submitted that the assessee has been making similar kind of payments every year to M/s Percept Ltd for availing various kinds of services. He submitted that, in some of the years, the AO has accepted the claim and in some other years he has disallowed. He submitted that the management fees is being paid for availing various types of services from group concerns. He submitted that identical disallowance was made by the AO in AY

2010-11 and the same has been deleted by the co-ordinate bench of Tribunal in ITA No.5538/Mum/2013 dated 16-05-2019.He submitted that the facts are identical in this year also and accordingly prayed that the order passed by ITAT in AY 2010-11 may be followed.

7. We heard the parties on this issue and perused the record. We noticed that the AO has observed that the assessee has not furnished any agreement entered by the assessee with M/s Percept Ltd for providing services. However, the Ld A.R submitted that the assessee has provided a copy of the service agreement with the AO. He submitted that the same is also placed at pages 133 to 137 of the paper book. We also notice from the order passed by the co-ordinate bench of the Tribunal for AY 2010-11 (referred supra) that the Tribunal has referred to the copy of agreement entered by the assessee with M/s Percept Ltd. All these facts would show that the AO was not correct in observing that the assessee has failed to furnish copy of service agreement. It also shows casual approach adopted by the AO on this issue also.

8. We notice that the above said service agreement was entered on 28th February, 2010. The assessee has stated that the same was entered into, in order to provide holistic 360degree media communication services including shared services like Personnel, Administrative, Legal and other shared services like tenders & tips and contacts for new business development. We notice that the assessee has been paying management fees to M/s. Percept Ltd from March, 2010. We further notice that the AO had disallowed the claim of management fee in AY 2010-11 and the Tribunal vide its order referred supra, has deleted the said disallowance. We notice that the view taken by Ld CIT(A) on this issue is in consonance with the view expressed by ITAT on an identical disallowance made in the hands of the assessee in AY 2010-11. Accordingly, we are of the view that the AO was not justified in making disallowance of management fees paid to M/s

Percept Ltd. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 02-12-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date : 02-12-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai