

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC-A", HYDERABAD

BEFORE
SHRI MANJUNATHA .G, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER
(Through Virtual Hearing)

आ.अपी.सं / ITA No. 1097/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

Ram Gopal Varma
Penumatsa,
Hyderabad.
[PAN : AGFPP4793C]

Income Tax Officer,
Vs. Ward-14(1),
Hyderabad.

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR

राजस्व द्वारा/Revenue by: Shri B. Naveen Kumar, Sr. AR

सुनवाई की तारीख/Date of hearing: 25/11/2024

घोषणा की तारीख/Pronouncement on: 04/12/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 09/09/2024 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("learned CIT(A)"), in the case of Ram Gopal Varma Penumatsa ("the assessee"), assessee preferred this appeal.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the AY 2017-18 on 29/10/2017 declaring a total income of Rs. 18,73,510/-. The case was selected for scrutiny through CASS and accordingly, notice U/s. 143(2) of the Income Tax Act, 1961 ("the Act") was issued on 13/08/2018 and the same was served on the assessee. In response, the assessee filed copy of computation of income, copy of financials, copy of Form 3CEB report. Thereafter, notices U/s. 142(1) of the Act were issued to the assessee on 08/07/2019 and 01/08/2019. In response, since the assessee has submitted the information partly, a show cause notice with respect to cash deposits during the demonetization was issued on 28/11/2019. In reply, the assessee furnished the cash book for the FY 2016-17. On perusal of the information submitted by the assessee and on verification of the assessee's books of account, the learned AO noticed that the assessee has made cash deposits of Rs. 22,50,000/- and Rs. 54,00,000/- in his bank accounts with Axis Bank Limited, Andheri (West), Mumbai and ICICI Bank, Andheri (West), Mumbai respectively. Accordingly, the assessee was show caused as to why the said cash deposits aggregating to Rs. 76,50,000/- should not be added to the total income of the assessee U/s. 69A of the Act. In response, the assessee furnished his cash book. On verification of the cash book submitted by the assessee, the learned AO observed that the assessee has cash balance of Rs. 1,26,000/- in old currency notes as on 31/12/2016 and therefore, the learned AO treated the said sum of Rs. 1,26,000/- as unexplained money U/s. 69A of the Act and added the same to the total income of the assessee. Further, on verification of the Profit & Loss Account of the assessee, the learned AO observed that the assessee has claimed Rs. 28,00,000/- and Rs. 15,68,792/- towards rent and sales promotion expenses including publicity. Since the assessee failed to furnish any cogent evidence to substantiate his claim, the learned AO disallowed Rs. 4,36,879/- i.e., 10% of the total expenditure incurred towards rent and sales promotion. Further, the learned AO also made

addition of Rs. 9,49,012/- towards interest paid to others as the assessee failed to substantiate his claim by producing the evidence. Thus, the learned AO determined the total income of the assessee at Rs. 33,85,401/- and passed the assessment order U/s 143(3) of the Act, dated 30/12/2019. While passing the assessment order, the learned AO also initiated the penalty proceedings U/s. 271AAC and U/s. 270A of the Act. Aggrieved by the order of the learned AO, the assessee preferred an appeal before the learned CIT(A).

3. On appeal, before the learned CIT(A), the assessee made various submissions. After considering the submissions made by the assessee, the learned CIT(A) partly allowed the appeal of the assessee and sustained the disallowance of Rs. 4,36,879/- made by the learned AO as 10% of the expenditure incurred towards sales promotion and rent. While sustaining the addition made by the learned AO, the learned CIT(A) has observed as under:

"5.2.6. In view of the above, I am of the considered view that the disallowance made by the Assessing Officer on estimated basis @ 10% of the said expenses U/s. 37 of the Act is fair and accordingly, the addition made by the Assessing Officer to the tune of Rs. 4,36,879/- on the above issue is sustained. Hence, the ground of appeal filed by the appellant on this issue is dismissed."

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

4. At the outset, the learned Authorized Representative ("learned AR) submitted that before the learned CIT(A), the assessee has explained the details of rent paid for the office premises during the year to 'Noori Feroz Lakdawala', 'Sanaa Muinuddin Achwa' and 'Yusuf M. Lakdawala, Mumbai'. Further, the assessee has also explained the expenditure incurred towards sales promotion and submitted the bills obtained from Zillion Hotels & Resorts Pvt Ltd, Mumbai. However, the learned CIT(A) did not consider the submissions of the assessee and confirmed the disallowance. The learned AR further submitted that the learned AO made the disallowance on ad-hoc basis without rejecting the books

of account submitted by the assessee and without pointing out any discrepancy in the books of account. Therefore, the learned AR pleaded that the disallowance of Rs. 4,36,879/- made by the learned AO and sustained by the learned CIT(A) on ad-hoc basis is unsustainable in law and the same may be deleted.

5. On the other hand, learned Departmental Representative (“learned DR”) vehemently opposed to the submissions of the learned AR and submitted that the onus is on the assessee to substantiate his claim along with corroborative documentary evidence like rental agreement entered into by the assessee and the landlords. Further, the learned DR submitted that submission of hotel bills along will not absolve the responsibility of the assessee in order to claim the expenditure as the same was incurred wholly and exclusively for the purpose of business. Therefore, the learned DR submitted that the order of the learned CIT(A) needs no interference.

6. We have heard both the sides and perused the orders of the learned Revenue Authorities as well as the material available on record. It is a fact that during the assessment proceedings, before the learned AO, the assessee has furnished his books of account, computation of total income, copy of financials and copy of Form 3CEB report. Further, with respect to expenditure incurred towards rent and sales promotion also, the assessee has furnished the bills and vouchers. However, the learned AO did not consider the same and disallowed the expenditure @ 10% of the total expenditure towards rent and sales promotion which worked out to Rs. 4,36,879/- on ad-hoc basis. Even on appeal, the learned CIT(A) also, neither rejected the assessee’s books of account nor find out any discrepancies therein. Under these circumstances, in our considered view, the learned AO / learned CIT(A) ought to have rejected the assessee’s books of account, before resorting to made the disallowance on ad-hoc basis, which is not done in the instant case. Therefore, considering the fact that before the learned CIT(A) the assessee has made various submissions and furnished substantial documentary evidence in support of his claim and since, neither the learned AO nor the learned CIT(A) did not reject the books of account furnished by the assessee, the disallowance made on ad-hoc basis by

the learned AO and sustained by the learned CIT(A) in the case of the assessee is unsustainable law. Accordingly, we hereby set-aside the orders passed by the learned AO and the learned CIT(A) and delete the addition of Rs.4,36,879/-. It is ordered accordingly.

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

Order pronounced in the open court on this the 04th December, 2024.

Sd/-
(MANJUNATHA .G)
ACCOUNTANT MEMBER
Hyderabad, Dated:04/12/2024
OKK

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Ram Gopal Varma Penumatsa, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad, Telangana-500082.
2. Income Tax Officer, Ward-14(1), Hyderabad, Telangana.
3. Pr. CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD