

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माजनीय श्री एस. एस. विस्वनेत्र रवि, न्यायिक सदस्य एवं
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI S.S. VISWANETHRA RAVI, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. ITA No.1564/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

ACIT Circle -1, Puducherry.	बनाम / Vs.	M/s. Happee Wines # 2/6, Thottakal Main Road, Karamanikuppam Puducherry-605 001.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AADFH-2419-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं./ ITA No.2207/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Happee Wines # 2/6, Thottakal Main Road, Karamanikuppam Puducherry-605 001.	बनाम / Vs.	ACIT Circle -1, Puducherry.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AADFH-2419-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri D. Anand (Advocate) - Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri R. Raghupathy (Addl.CIT) - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	17-12-2024
घोषणा की तारीख / Date of Pronouncement	:	22-01-2025

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 20.03.2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28.12.2019. The registry has noted delay of 3 days in the appeal of the revenue. Similar delay of 93 days has been noted in assessee's appeal. Both the delays stand condoned and we proceed for disposal of cross-appeals on merits.

1.2 The grounds taken by the assessee are as under:-

1. The order of the learned Assessing Officer is against the law and facts of the case.
2. The appellant case was subject to Tax Audit. The appellant maintains regular books of accounts such as cash book, ledger, bank book etc. The appellant has maintained proper vouchers for all the expenses claimed by the appellant.
3. The appellant is carrying on the business of whole sale and retail trading of IMFL products of 150 to 200 brands. There are new brands and majority of the brands are non popular brands. Hence the appellant has to necessarily incur sales promotion expenses for marketing the non popular brands and new brands, whereas the appellant competitor are mainly dealing with popular brands. More over the popular brands are having limited varieties maximum ten brands .Whereas the appellant is dealing almost 150 to 200 brands. This shows the appellant is dealing with almost 175 non popular brands.
4. The Assessing Officer has not rejected the books of accounts. On one hand the Assessing Officer accepts the book results but the other hand he has disallowed almost 75 (percentage) $(50000000/66948093 \times 100)$ of the sales promotions expenses claimed by the appellant. The appellant has maintained proper vouchers for the entire expenses claimed by the appellant Rs.6,69,48,093 towards sales promotion expenses. The appellant has reported a turnover of Rs.136,00,00,000 out of which the appellant has incurred Rs.6,69,48,093 towards Sales promotion expenses. This shows the appellant has incurred only 4.92 (percentage) towards sales promotion expenses. The sales promotion expenses are genuine and the appellant has to necessarily incur the above expenses for achieving the turnover of Rs.136,00,00,000. The appellant can achieve the above turnover by doing good marketing. Hence the appellant has to incur sales promotions expenses for marketing its products.
5. In the case of appellant scrutiny assessment has been completed for the A.Y 2012-13, A.Y 20 13-14 and A.Y 2014-15. While completing the assessment u/s.143(3) the Assessing Officer has completed the assessment by accepting the sales promotion expenses. No additions were made. towards sales promotion expenses for the above assessment years.
6. The Assessing Officer has made the above addition without any material evidence. The Assessing Officer has made a comment that vouchers for the month of July 2016 were self-made. Hence 75 (percentage) of the total expenses claimed under sales promotion expenses are disallowed. The Assessing Officer has made the addition towards sales promotion expenses by disallowing lump sum amount of Rs.5,00,00,000 by simply verifying some sample vouchers for the month of July. The Assessing Officer has not brought on record any material evidences to justify that the expenses claimed are not genuine or of personal in nature. Hence in the absence of all such evidences, disallowing 75(percentage) of expenses claimed are imaginary and erratic on the part of Assessing Officer.

7. The Assessing Officer has also disallowed chit loss of Rs.500000. With regard to the above disallowance of chit loss the appellant submits that he has claimed the chit losses incurred during the course of business. The chit dividend amount shown as an income and similarly the chit kasar paid has been claimed as loss

8. The appellant has claimed Rs.40024419 towards sales promotion expenses in the Profit and Loss Account during the financial year 2016-17. Whereas the Assessing Officer has arrived Rs.6,69,48,093 as sales promotion expenses and thereby the Assessing Officer disallows Rs.5,00,00,000 towards sales promotion expenses. The above action of the Assessing Officer shows that he has disallowed sales promotions expenses beyond the expenses claimed by the appellant in the Profit and Loss Account. At no point of time the expenses disallowed can be more than the expenses claimed in the Profit and Loss Account. The Assessing Officer has simply adopted the value of Rs.50000000 towards disallowance under sales promotion expenses without proper evidences and facts.

9. The appellant prays that the additions made by the Assessing Officer towards disallowance of sales promotion expenses Rs.5,00,00,000 and chit loss Rs.500,000 may kindly be deleted and justice be rendered.

10. The appellate proceeding with Hon'ble CIT(A), given partial relief to the appellant as there was an error on the sales promotion expenses figure which is apparent on the record and incorrect amount taken by Id AO as Rs 6,69,48,093/out of which, Id AO disallowed Rs.5 crore whereas actual expenses claimed in the audited financial was Rs.4,00,24,419/- only. Hence the Id CIT on pointing out this factual error, had allowed the appellant contention partially, but while passing the order made arbitrary disallowance of 25% on actual expenses comes to Rs. 1,00,06,105/- and passed this impugned order.

11. The Chit loss of RS 5 lacs claimed and disallowed by the AO, contested in appeal to Hon'ble CIT(A), upheld assessing officer order, hence contested in this appeal.

1.3 The grounds taken by the Revenue read as under:-

1. The order of the Id. CIT (A) contrary to the facts and circumstance of the case.
2. The Id. CIT (A) erred in restricting the disallowance made by the AO towards the sales promotion expenses, @25% of actual expenses debited in profit & loss account.
 - 2.1. The Id. CIT (A) erred in restricting the disallowance made by the AO towards the sales promotion expenses @25% of actual expenses debited in profit & loss account without appreciating the true nature of the expenditure.
 - 2.2. The Id. CIT (A) erred in restricting the disallowance made by the AO towards the sales promotion expenses @ 25% of actual expenses debited in profit & loss account without appreciating the provision explanation 1 to section 37 of the Act.
 - 2.3. The Id. CIT (A) erred in restricting the disallowance made by the AO towards the sales promotion expenses @ 25% of actual expenses debited in profit & loss account without appreciating the fact that brands are promoted by the brand owners not by the retail and whole sale traders.
 - 2.4. The Id. CIT (A) erred in restricting the disallowance made by the AO towards the sales promotion expenses @ 25% of actual expenses debited in profit & loss account without appreciating the fact that assessee is retail and whole sale traders and generally promotion of brands is done by brand owners not by traders.
3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

As is evident, the sole subject matter of appeal is disallowance of sales promotion expenses.

1.4 The Ld. AR advanced arguments and stated that the expenses were in the nature of petty incentives given to the employees of purchasers. It has been stated that expenditure is as per business practice and the claim has been allowed in earlier as well as subsequent years. The Ld. AR also stated that expenditure was commensurate with the sales turnover of the assessee. The Ld. AR did not press the grounds relating to chit loss. The Ld. Sr. DR, on the other hand, stated that expenses were not substantiated and the assessee could not have incurred such expenditure. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in wholesale and retail trading of IMFL.

Proceedings before lower authorities

2.1 The Ld. AO noted that the assessee claimed expenditure of Rs.669.48 Lacs towards sales promotion expenses and accordingly, the assessee was directed to furnish evidences thereof. The assessee furnished payment vouchers for one-month on sample basis. However, since the vouchers were self-made vouchers, Ld. AO made adhoc disallowance of Rs.500 Lacs against the same.

2.2 During appellate proceedings, the assessee submitted that it claimed expenditure of Rs.400.24 Lacs only as sales promotion expenses and Ld. AO erred in taking the figures of Rs.669.48 Lacs. The same would show that the disallowance was made in a casual manner. It was also stated that the assessee was dealing in more than 150 to 200 brands. These were new brands and majority of the brands were non-

popular brands. The assessee has to necessarily incur sales promotion expenses by way of tips for marketing of non-popular brands and new brands. It was pointed out that the books were subjected to Audit and the same were not rejected. The expenditure merely constitutes 2.94% of the sales turnover of the assessee. The assessee again furnished complete details of incentive paid along with quantitative details as well as the ledger extract of sales promotion expenses. Further, the assessment for AYs 2012-13 to 2014-15 was scrutinized wherein this claim was accepted and no such disallowance was made. No material was brought on record to establish that the claim as not genuine.

2.3 The Ld. CIT(A) observed that the assessee did not furnish party-wise details, confirmations etc. to justify claim of sales promotion expenses. From self-made vouchers, it could not be ascertained that the expenditure was incurred wholly and exclusively for the purposes of business. This onus was on assessee. Finally, Ld. CIT(A) directed Ld. AO to restrict the disallowance to 25% of the actual expenditure claimed after due verification thereof. The aforesaid adjudication has led to cross-appeal before us.

Our findings and Adjudication

3. From the facts, it emerges that assessee is engaged in wholesale and retail trade of IMFL. The assessee is dealing in large number of brands. The business model of the assessee is such that it has to incur sales promotion expenses to promote the non-popular brands. The same are in the nature of tips for marketing of these brands. It could be seen that the complete details of the expenditure on sample basis for the month of July, 2016 was duly furnished by the assessee before both the authorities. It is undisputed fact that the assessee has incurred such

expenditure in earlier years. The returns of income for AYs 2012-13 to 2014-15 were scrutinized wherein no such disallowance was made. No disallowance has apparently been made in subsequent years. It is also evident that the expenditure constitutes merely 2.94% of sales turnover of the assessee. As per chart placed before us, the percentage of such expenditure in AY 2018-19 is 2.93% whereas this percentage for AY 2019-20 is 3.26% of sales turnover. It is also discernible that the books of the assessee are subjected to Audit and the same has not been rejected. No defect has been pointed out in the books of accounts. Considering the entirety of facts and circumstances, the claim of expenditure has to be accepted in *toto*. In our opinion, the *adhoc* disallowances is without any sound bases and the same is, therefore, liable to be deleted. We order so.

4. The appeal of the assessee stands partly allowed. The appeal of the revenue stand dismissed.

Order pronounced on 22nd January, 2025

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 22-01-2025
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF