

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No.1527/KOL/2015
Assessment Year: 2011-2012**

**Haldia Tobacco House,.....Appellant
Uttar Durgachak, Haldia,
Purba Medinipore-721 602
[PAN: AABFH 4307 C]**

-Vs.-

**Joint Commissioner of Income Tax,.....Respondent
Range-27, Haldia,
Basudevpur, Khanjanchak,
Haldia,
Dist. Purba Medinipur-721 602**

Appearances by:

*Shri Gautam Ghosh, Advocate , for the assessee
Shri Uday Kumar Sardar, JCIT, D.R., for the Department*

Date of concluding the hearing : July 26, 2016
Date of pronouncing the order : September 28, 2016

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-7, Kolkata dated 17.11.2015 and the solitary issue arising out of the same relates to the disallowance of 50% of the expenditure made by the Id. CIT(Appeals) out of Rebate & Discount and Sales Promotion.

2. The assessee in the present case is a partnership firm, which is engaged in the business of distribution of ITC products. The return of income for the year under consideration was filed by it on 22.09.2011 declaring total income of Rs.3,54,280/-. In the assessment completed under section 143(3) vide an order dated 25.03.2014, the gross profit margin of the assessee from sale of Cigarettes was estimated by the Assessing Officer at 3.33% as against 1.20% shown by the assessee and

the difference in the gross profit as worked out at Rs.39,25,759/- was added by the Assessing Officer to the total income of the assessee.

3. The addition made by the Assessing Officer by estimating the gross profit margin from sale of cigarettes on higher side was disputed by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the said addition made by the Assessing Officer. He, however, found that the sums of Rs.12,08,361/- and Rs.11,98,907/- received by the assessee from its principals on account of rebate & discount and sales promotion expenses were credited by the assessee to its Profit & Loss Account. In this regard, the explanation offered by the assessee that these amounts received from the principals were passed on to its customers, was not found fully acceptable by the Id. CIT(Appeals) in the absence of sufficient documentary evidence to support and substantiate its claim. Although the assessee furnished month-wise details of the relevant amounts paid to the customers, the Id. CIT(Appals) found the same to be stereo-typed containing the same names and the same amounts. He also found that all these amounts were paid by the assessee in cash for which no evidence in the form of vouchers or bills was maintained by the assessee. He, therefore, found it difficult to believe the assessee's version that the expenses relating to sales promotion and rebate/discount recovered from the principals were passed on to the customers. Even the Authorized Representative of the assessee expressed his consent before the Id. CIT(Appeals) for disallowing the reasonable amount of expenditure on this count. Accordingly, the Id. CIT(Appeals) made a disallowance of Rs.12,03,634/- being 50% of the expenses on account of rebate & discount and sales promotion. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. Counsel for the

assessee has submitted that signboards and glow-boards were displayed at the shops of the customers for which the assessee had paid certain fixed amount, which got subsequently reimbursed from the principals, it is observed that sufficient evidence to fully support and substantiate the claim of the assessee on this issue has not been brought on record. The specific adverse findings recorded by the Id. CIT(Appeals) in this regard are sufficient to show that the claim of the assessee of having paid the entire amounts received from the principals on account of sales promotion and rebate/discount to its customers is not fully verifiable and this position was accepted even by the Id. A.R. of the assessee before the Id. CIT(Appeals) when he consented for making a reasonable disallowance. However, keeping in view all the facts of the case including the nature of the expenditure in question, vis-à-vis the business of the assessee, I am of the view that the disallowance of 50% of the relevant expenditure made by the Id. CIT(Appeals) is on the higher side and it would be fair and reasonable to restrict the same to 20% of the total expenditure. Accordingly, I modify the impugned order of the Id. CIT(Appeals) and direct the Assessing Officer to restrict the disallowance to 20% of the relevant expenditure.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on September 28, 2016.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 28th day of September, 2016

**Copies to : (1) Haldia Tobacco House,
Uttar Durgachak, Haldia,
Purba Medinipore-721 602**

**(2) Joint Commissioner of Income Tax,
Range-27, Haldia,
Basudevpur, Khanjanchak,
Haldia, Dist. Purba Medinipur-721 602**

- (3) *Commissioner of Income Tax (Appeals)-7, Kolkata;*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.