

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2677/Mds/2016

निर्धारण वर्ष / Assessment Year : 2008-09

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2(1),
Chennai - 600 034.

v. M/s Empee Breweries Ltd.,
No.788/2, Kuthambakkam,
Thirumazhisai, Tiruvallur Dt.,
Tamil Nadu – 602 107.

(अपीलार्थी/Appellant)

PAN : AAACE 9764 A

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2590/Mds/2016

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Empee Breweries Ltd.,
No.788/2, Kuthambakkam,
Thirumazhisai, Tiruvallur Dt.,
Tamil Nadu – 602 107.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 2(1),
Chennai - 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by

: Shri Shiva Srinivas, JCIT

निर्धारिती की ओर से /Assessee by

: Shri D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing : 13.04.2017

घोषणा की तारीख/Date of Pronouncement : 28.04.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue and assessee are directed against the very same order of the Commissioner of Income Tax (Appeals) -6, Chennai, dated 13.07.2016 and pertain to assessment year 2008-09. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee-company is engaged in the business of manufacture of Indian-made foreign liquor and it is supplying the same to Tamil Nadu State Marketing Corporation. The Ld. D.R. submitted that the assessee is claiming marketing and promotion expenses during the year under consideration. The expenses were on account of purchase of gift articles which were said to be given to customers at the retail shops of Tamil Nadu State Marketing Corporation. According to the Ld. D.R., for the assessment year 2010-11, similar promotion expenses were claimed and the Assessing Officer disallowed the claim of the assessee by an elaborate order. This year, the assessee changed the company from which the promotion articles said to have been purchased.

According to the Ld. D.R., since the company was changed, the Assessing Officer by following his own order, disallowed the claim of the assessee. On appeal by the assessee, the CIT(Appeals) by following the order of this Tribunal in the assessee's own case for assessment year 2010-11, restricted the disallowance to 7.5% of total claim and the balance 92.5% was allowed. According to the Ld. D.R., the assessee has filed the appeal in respect of disallowance made by the CIT(Appeals) to the extent of 7.5% of the total claim and the Revenue has filed the appeal against the direction of the CIT(Appeals) to allow sales promotion expenses to the extent of 92.5%. According to the Ld. D.R., there is no justification on the part of the CIT(Appeals) to allow the claim of the assessee to the extent of 92.5%.

3. On the contrary, Shri D. Anand, the Ld.counsel for the assessee, submitted that an identical issue came before this Tribunal in the assessee's own case for assessment year 2010-11. The Assessing Officer, in fact, disallowed the claim of the assessee for the same reason which was recorded for the assessment year 2010-11. According to the Ld. counsel, an identical issue also came before this Tribunal for assessment years 2003-04 and 2004-05.

After considering the claim of the assessee and contention of the Revenue, this Tribunal found that there was a possibility of excessive claim. Accordingly a similar order passed by the CIT(Appeals) was confirmed and disallowance was restricted to 7.5%. In fact, according to the Ld. counsel, this Tribunal came to a conclusion that the CIT(Appeals) after examining the material available on record came to a reasonable conclusion. The CIT(Appeals) after reproducing the order of this Tribunal, in fact, allowed the claim of the assessee. therefore, according to the Ld. counsel, there is no merit in the appeal of the Revenue.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The disallowance of sales promotion expenses was considered by this Tribunal for the assessment years 2010-11, 2003-04 and 2004-05. In fact, the assessee is manufacturing Indian-made foreign liquor and supplying the same to Tamil Nadu State Marketing Corporation. Tamil Nadu State Marketing Corporation, in turn, is selling the same to the customers through retail outlets across the State. For the purpose of promoting Indian-made foreign liquor manufactured by assessee-company, they are supplying some gift articles to the

customers at the retail vending shops. The assessee claimed the expenditure while computing the total income. In fact, the Assessing Officer disallowed the claim of the assessee on various reasons. The CIT(Appeals) for the assessment years 2010-11, 2003-04 and 2004-05, allowed the claim of the assessee holding that it is an expenditure for the purpose of business. The orders of the CIT(Appeals) for assessment years 2003-04, 2004-05 and 2010-11 were, in fact, confirmed by this Tribunal in I.T.A. No.2162, 2647, 2648 and 2649/Mds/2014 by order dated 25.03.2015. In fact, for the assessment year under consideration, the CIT(Appeals) followed the order of this Tribunal for assessment years 2003-04, 2004-05 and 2010-11.

5. Since the CIT(Appeals) has followed the order of this Tribunal and restricted the disallowance to 7.5% and allowed the claim of the assessee to the extent of 92.5%, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. In the result, both the appeals of the Revenue and assessee are dismissed.

Order pronounced on 28th April, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th April, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-6, Chennai
4. Principal CIT-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.