

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 600/JP/2019
निर्धारण वर्ष/Assessment Year :2014-15

M/s Seward Exports Pvt Ltd. 5-L-22, Mahaveer Nagar-3, Kota	बनाम Vs.	Assistant Commissioner of Income-Tax, Circle-01, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAFCS7423M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Siddharth Ranka (Adv.) &
Sh. Saurav Harsh (Adv.)
राजस्व की ओर से/ Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 15/03/2021
उदघोषणा की तारीख/ Date of Pronouncement: 30/03/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 11.02.2019 wherein he has confirmed various additions made by the Assessing Officer relevant for A.Y 2014-15.

2. The relevant facts as emerging from the records as well as the findings of the Id. CIT(A) which are under challenge before us read as under:-

"Ground No. 3:

In the profit & loss account, diwali expenses of Rs. 38,282/- has been debited. On examination, it is noticed that these expenses are not properly vouched or are supported by self-made vouchers only. Further, these expenses were met by cash payments. Therefore, these expenses are not subject to verification. Therefore, the assessee was asked vide order sheet entry dated 06.09.2016 to show cause as to why necessary disallowance may not be made out the claim so made.

The assessee has not submitted anything specific in this regard. As stated above, the expenses claimed by the assessee are not subject to verification for want of proper vouchers and due to cash payments. Therefore, it is considered to disallow 5% of the expenses of Rs.38,282/-, which comes to Rs.1,914/-, is disallowed to cover up any leakage of revenue on this account.

As regards the Ground no 3 related to disallowance made from Diwali expenses, I have gone through assessee's submission and AO's findings.

On the facts involved and the nature of expenses as well as the proportion in which the disallowance is made to the total claim made, the disallowance is found to be reasonable & justified. The same is accordingly upheld.

This ground of appeal is treated as dismissed.

Ground No. 4:

In the profit & loss account, the assessee debited general cartage expenses of Rs.99,800/-. On examination, it is noticed that these expenses are not properly vouched or are supported by self-made vouchers only. Further, these expenses were met by cash payments.

Therefore, these expenses are not subject to verification. Therefore, the assessee was asked vide order sheet entry dated 06.09.2016 to show cause as to why necessary disallowance may not be made out the claim so made.

The assessee has not submitted anything specific in this regard. As stated above, the expenses claimed by the assessee are not subject to verification for want of proper vouchers and due to cash payments. Therefore, it is considered to disallow 5% of the expenses of Rs. 99,800/-, which comes to Rs. 4,990/-, is disallowed to cover up any leakage of Revenue on this account.

As regards the Ground no 4 related to disallowance made from General cartage expenses, I have gone through assessee's submission and AO's findings.

Looking to the nature of these expenses, some disallowance for non-business & unverified portion in the total claim was justified. The disallowance has already been restricted to 5% of the total claim by the A.O and is found reasonable and justified. No interference is called for in the same

This ground of appeal is treated as dismissed.

Ground No. 5:

In the profit & loss account, the assessee debited material shifting expenses of Rs.11,93,547/ -. On examination, it is noticed that these expenses are not properly vouched or are supported by self-made vouchers only. Further, these expenses were met by cash payments.

Therefore, these expenses are not subject to verification. Therefore, the assessee was asked vide order sheet entry dated 06.09.2016 to show cause as to why necessary disallowance may not be made out the claim so made.

The assessee has not submitted anything specific in this regard. As stated above, the expenses claimed by the assessee are not subject to verification for want of proper vouchers and due to cash payments. Therefore, it is considered to disallow 5% of the expenses of Rs.11,93,547/ -, which comes to Rs. 59,677/ -, is disallowed to cover up any leakage of Revenue on this account.

As regards the Ground no 5 related to disallowance made from Material shifting expenses, I have gone through assessee's submission and AO's findings.

Looking to the nature of these expenses, some disallowance for non-business & unverified portion in the total claim was justified. However, the same has to be reasonable. The disallowance is already restricted to only 5% of the total claim which appears reasonable as well as justified and is not interfered with.

This ground of appeal is treated as dismissed.

Ground No. 6:

In the profit & loss account, the assessee debited miscellaneous expenses of Rs.42,776/-. On examination, it is noticed that these expenses are not properly vouched or are supported by self-made vouchers only. Further, these expenses were met by cash payments. Therefore, these expenses are not subject to verification. Therefore, the assessee was asked vide

order sheet entry dated 06.09.2016 to show cause as to why necessary disallowance may not be made out the claim so made.

The assessee has not submitted anything specific in this regard. As stated above, the expenses claimed by the assessee are not subject to verification for want of proper vouchers and due to cash payments. Therefore, it is considered to disallow 5% of the expenses of Rs. 42,776/- , which comes to Rs. 2,139/ -, is disallowed to cover up any leakage of Revenue on this account.

As regards the Ground no 6 related to disallowance made from Miscellaneous expenses, I have gone through assessee's submission and AO's findings.

On the facts involved and the nature of expenses as well as the proportion in which the disallowance is made to the total claim made, the disallowance is found to be reasonable & justified. The same is accordingly upheld.

This ground of appeal is treated as dismissed.

Ground No. 7:

In the profit & loss account, the assessee debited repairs & maintenance expenses of Rs. 21,98,911/ -. On examination, it is noticed that these expenses are not properly vouched or are supported by self-made vouchers only. Further, these expenses to the extent of Rs. 63,771/ - were paid fully in cash. Therefore, these expenses are not subject to verification. Therefore, the assessee was asked vide order sheet entry dated 06.09.2016 to show cause as to why necessary disallowance may not be made out the claim so made.

The assessee has not submitted anything specific in this regard. As stated above, the expenses claimed by the assessee are not subject to verification for want of proper vouchers and due to some cash payments. Therefore, it is considered to disallow 5% of the expenses of Rs. 21,98,911/-, which comes to Rs. 1,09,946/- is disallowed to cover up any leakage of Revenue on this account.

I have gone through assessee's submission and AO's findings.

As regards the Ground no 7, Considering the nature of the expenses, quantum of the disallowance made and the reasons given by the AO, the disallowance is being restricted on a more reasonable basis to Rs. 50,000/- to take care of any pilferage due to cash and non business related expenses. The balance disallowance is to be deleted.

This ground of appeal is treated as partly allowed."

3. During the course of hearing, the Id. AR submitted that the assessee is engaged in the business of processing & exports of stones. During the year under consideration, it has reported a total turnover of Rs. 25,10,35,845/- disclosing gross profit of Rs. 9,46,15,152/- thereby reporting gross profit of 37.69% which is amongst the highest top three in the industry. It was submitted that various additions have been made by the Assessing Officer for the reason that the expenses have been met by cash payment. It was submitted that given the nature of the assessee's business, it is but natural that the assessee is required to incur certain expenditure through cash in terms of making payment towards cartage, material shifting, repair & maintenance etc. It was submitted that there is nothing under law that the assessee cannot incur expenditure in cash so long as test of business expediency is satisfied in the given case. It was submitted that during the year under consideration, it is not the case that

all of the expenses have been incurred in cash however only very small percentage of expenses have been incurred in cash which are duly supported by vouchers as well as entries made and duly recorded in the books of accounts. Coming to the specifics of the expenditure so incurred and under consideration, it was submitted that out of total Diwali expenses of Rs. 38,282/- expenditure of only Rs. 8282/- has been incurred in cash and the relevant details of the said cash expenditure is duly submitted during the course of assessment proceedings. Similarly, out of total general cartage expenses of Rs. 99,800/-, only expenses of Rs. 30,350/- have been incurred in cash. Regarding repairs and maintenance expenses, it was submitted that out of Rs. 21,98,911/-, the assessee has only incurred expenditure of Rs. 60,576/- in cash whereas an amount of Rs. 1,09,946/- has been disallowed by the Assessing Officer. It was accordingly submitted that merely because the expenditure has been incurred in cash, so long as the same has been incurred for the purposes of business and is duly supported by vouchers and entries in the books of accounts, the same cannot be disallowed. Further, it was submitted that no specific expenditure has been highlighted by the Assessing Officer which has not been incurred for the purposes of the business. It was accordingly submitted that the disallowance so made by the Assessing Officer are clearly ad-hoc in nature and the same may be directed to be deleted.

4. Per contra, the Id. DR relied on the findings of the Assessing Officer and it was submitted that the expenses have been disallowed for the reason that no proper vouchers have been submitted for verification and the payments have been made in cash. These expenses are not properly vouched or are supported by self-made vouchers only. Further, the expenses have been incurred in cash. Therefore, these expenses are not

subject to verification. The Assessing Officer has been reasonable enough to disallow only 5% of the said expenditure and which has rightly been confirmed by the Id. CIT(A). She accordingly supported the order and findings of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. Firstly, it is noted that the Assessing Officer has disallowed 5% of the loading and unloading expenses which have been deleted by the Id. CIT(A). Though, the same is not the subject matter of present dispute, however, it is relevant to consider the findings of the Id. CIT(A) wherein he has stated that the AO has not been able to bring examples of specific disallowable expenses among this category and if the books of accounts were not reliable because of cash or self made vouchers, he should have rejected the same u/s 145(3) and in absence of the same, he is satisfied with the explanation given by the assessee and the disallowance so made by the Assessing Officer appears to be unnecessary and the same was directed to be deleted. However, regarding other disallowances made by the Assessing Officer which have been sustained by the Id. CIT(A) and are subject matter of dispute before us, though, the finding of the Assessing Officer are more or less similar as in the case of disallowances of loading and unloading expenses, however, the Id. CIT(A) has sustained the same holding that on the facts involved and the nature of expenses as well as the proportion in which the disallowance is made to the total claim made, the disallowance is found to be reasonable & justified. We, therefore, find that there are inconsistencies in the findings of the Id. CIT(A), where at first place, he has held that the Assessing Officer has not able to bring any example of specific disallowable expenses in case of

loading and unloading expenses and under the similar facts pattern where the disallowances have again been made by the Assessing Officer in respect of other expenses without bringing any specific disallowable expenses, he has sustained these disallowances. Therefore, on this account and in absence of the specific finding recorded by either of the authorities that the expenses have not been incurred wholly or expensive for the purpose of business or are bogus in nature merely because expenses incurred in cash and supported by self made vouchers cannot be a basis for making the disallowance in the hands of the assessee. The Id DR has contended that only 5% of the expenses have been disallowed, however, if we look at the basis of such disallowance which is cash payment and in such a situation, as a percentage of expenses incurred in cash, the disallowance comes to 29% as contended by the Id AR. In our view, the issue is not about the percentage of expenses rather the real issue is whether the expenses so disallowed have been incurred for the purposes of business or not. There is no finding by either of the authorities that the expenses have not been incurred for the purposes of business or the test of business expediency has not been satisfied. We are therefore of the considered view that the expenses have been disallowed for the sake of making the disallowances without bringing on record any specifics of disallowable expenses as not incurred for the purposes of business and therefore, the disallowances so made are clearly ad-hoc in nature which cannot be sustained in the eyes of law and the same are hereby directed to be deleted.

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

Order pronounced in the open Court on 30/03/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/03/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Seward Exports Pvt Ltd., Kota
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 600/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar