

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.306/Viz/2016
(निर्धारण वर्ष/Assessment Year:2011-12)

ACIT
Circle-1(1)
Rajahmundry

Vs. M/s Gowthami Chemicals &
Pesticides (Pvt.) Ltd.
D.No.22-9-2, Lakshmi Dham
Veerabhadrapuram
Rajahmundry
[PAN : AAACG8085C]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri M.R.Bangari, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 15.05.2018

घोषणा की तारीख/Date of Pronouncement

: 18.05.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income-Tax (Appeals)[CIT(A)], Rajahmundry vide I.T.A No.25/2014-15/ACIT/C-1/RJY/2015-16 dated 21.03.2016 for the assessment year 2011-12.

2. Ground No.1 and 8 are general in nature which does not require specific adjudication.

3. Ground No.2 and 3 are related to the disallowance of estimated expenditure of Rs.13,68,796/- in respect of the following items:

Sl.No.	Head of expenses	Amount claimed	Amount disallowed Rs.
01.	Marketing expenses	1,24,99,654/-	12,49,965/-
02.	Godown expenses	7,02,426/-	70,242/-
03.	Plant maintenance	4,85,893/-	48,589/-
	Total disallowances		13,68,796/-

3.1. During the assessment proceedings, the Assessing Officer (AO) found that the sales have been increased from Rs.646.00 lakhs to Rs.1398 lakhs, resulting in increase of 116.45%, whereas, there was sharp increase in the expenses which according to the AO was unreasonable. The AO asked the assessee to explain the reasons for disproportionate increase in expenses and the Ld.AR of the assessee explained that the increase was due to business strategies and increase in business turnover. However, the Ld.AO not satisfied with the explanation and disallowed 10% of the expenses

amounting to Rs.13,68,796/- under the head marketing, godown and plant maintenance expenses as per the details furnished in para No.3.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition holding that the disallowance is unjustified.

5. We have heard both the parties and perused the material placed on record. The revenue's case is that expenses incurred under the marketing, godown and plant maintenance were disproportionate to the increase in sales of the assessee, hence disallowance is justified. The assessee's case is that in spite of increase in expenses, there was no reduction in profit and in fact, the profit has increased from 9.04 lakhs to 21.96 lakhs i.e. 1.40% to 1.57% compared to earlier year. Unless the assessee makes such marketing initiatives, business plans and create the infrastructure, the sales would not increase. The Ld.AR further argued that there was increase in sales as well as the profit both in quantity as well as percentages, therefore argued that the expenditure incurred was reasonable and genuine hence no disallowance is called for.

6. We have heard both the parties and perused the material placed on record. The Ld.CIT(A) deleted the addition holding that the expenditure incurred by the assessee is reasonable and justified. The relevant part of the order of the Ld.CIT(A) is extracted as under:

"4.3 I have considered the submissions and also perused the details filed. From the perusal of the Profit and Loss account, it is seen that the sales have increased to Rs.13.98 crore from Rs.6.46 crore in the earlier year. Correspondingly the operating expenses have increased from Rs.6.52 crore to Rs.14.92 crore. The net profit before taxation has increased to Rs.21.96 lakh from Rs.9.04 lakh. Thus I find that there is proportionate increase in expenditure in tune with the higher revenue generation by way of sales during the year. There is substantial increase in sales to the tune of nearly Rs.752 crore, and I find merit in the contention that such an increase was possible due to the marketing initiatives taken during the year, and in regard to which it was stated marketing expenses to the tune of Rs.1.24 crore was incurred. The details filed regarding the return on marketing expenses showing higher turnover achieved in the subsequent years also lend justification for the impugned marketing expenses incurred during the year. The AO has not doubted the claim of marketing initiatives undertaken by the assessee, and has not pointed any specific deficiency or discrepancy in the expenditure claimed. Besides, I find there was no decline in the profit margin. The assessee has shown marginal increase in profit margin Of 1.54% compared to 1.40% in the earlier year. In these financial scenario, I am of the view that the impugned disallowance made by the AO is not justified. Accordingly, the AO is directed to delete the impugned disallowance."

There was no dispute with regard to genuineness of expenditure. The AO did not make out a case of bogus expenditure. The AO also did not doubt the claim of the assessee regarding the marketing initiatives undertaken by the assessee and it was a fact that the sales of the assessee company have increased from Rs.6.46 crores in the earlier year to Rs.13.98

crores in the year under consideration and simultaneously, there was increase in the profit as well as rate of profit. The marketing expenditure cannot be in proportion to the sales, since the marketing initiatives would be beneficial to the company in the long run. Marketing expenditure has to be incurred as per the requirement of the company to improve the business and to make known the public regarding the brand image of the company. Therefore the expenditure cannot be in proportion to the sales. Similarly regarding godown expenditure and plant maintenance, the assessee has incurred the expenditure as per the business exigencies. The revenue's case is not with regard to genuineness of expenditure. Business requirements and planning for future has to be decided by the assessee but not by the Department. It is the assessee who has to run the business. The revenue has not proved that the assessee has made any bogus claim or incurred personal expenditure in the guise of marketing, godown and plant and maintenance expenses. In the absence of specific evidence to establish that the expenditure claimed by the assessee is bogus or unsubstantiated with relevant evidences we hold that the CIT(A) has rightly deleted the addition and the same is upheld and the appeal of the revenue on this ground is dismissed.

7. Ground No. 4 to 7 are related to the introduction of share capital. During the assessment proceedings, the AO found that the assessee has accepted the share capital of Rs.40,00,000/- from the following individuals:

Sl.	Name of the Share Holder	Amount (Rs. in lakhs)
1.	Sri K.Venkata Reddy	6.00
2.	Sri K.Srikanth Reddy	6.00
3.	Smt.K.N.Vinitha Devi	6.00
4.	Sri K.N.R.K.Reddy	6.00
5.	Sri K.S.K.Reddy	6.00
6.	Sri P.S.Reddy	5.00
7.	Sri P.B.Reddy	5.00
	Total	40.00

The assessee has furnished the details, but the AO did not believe the credit worthiness of the contributors of the share capital, hence held that the assessee company has introduced its own funds into business and accordingly made the addition of Rs.40,00,000/-.

8. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the additions stating that the assessee has discharged its onus by furnishing the details and confirmations, but the

revenue failed to discharge its onus. The Ld.CIT(A) relied on the orders of the Hon'ble ITAT Vizag Bench in the case of M/s Meridian Promoters Pvt. Ltd. Vs. DCIT, the decision of Hon'ble Supreme Court in the case of Lovely Exports 251 ITR 263 and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Stellar Investments Ltd. 192 ITR 287 and deleted the addition. Aggrieved by the order of the Ld.CIT(A) the revenue carried the matter to the Tribunal.

9. We have heard both the parties and perused the material placed on record. The revenue's case is that the assessee could not establish the source for contribution of share capital and the share holders though filed the confirmations, they do not have sufficient source to make the investment in share capital. The AO is of the view that the credit worthiness of the shareholders is not established by the assessee. Out of seven share holders some of them are income tax assesses and the remaining people are having income from agriculture. Since the investment made by the contributors to share capital is substantial amount, the AO doubted the source. The assessee's case is that the assessee

is a company and had filed the confirmations explaining the sources, hence no addition is warranted.

In this case, the Ld.CIT(A) deleted the addition holding that there is no case for doubting the genuineness of share capital and the relevant order of the CIT(A) is extracted in para No.6 which reads as under :

"6.I have considered the submissions and details filed. From the perusal of the details it is seen that the assessee has furnished evidence in support of creditworthiness of the investors in the form of pattadar pass books in relation to some parties and copies of I T returns in the case of four of the above investors. However, the AO was not convinced with their creditworthiness. The AO also disbelieved the genuineness of the investment as the transaction was in cash. Thus the AO concluded that the amount represent undisclosed income of the assessee. However, I find that such conclusion is not drawn with reference to any incriminating material information or records. On the other hand, the Return of share allotment filed in Form Nq.2 clearly indicate that shares have been allotted in favour of the above referred persons in lieu of the above referred amounts invested with the company. With such allotment the above parties have become share holders of the company. Therefore, I do not find any basis to doubt the genuineness of the above referred investments made. As regards, creditworthiness of the parties also, I find that the assessee has discharged its onus in furnishing the land holding details and pattadar passbooks for the income source of some of the investors, and, in 4 cases the copies of income returns of the investors. Besides, the Hon'ble ITAT, Vizag Bench in the case of M/s. Meridian Promoters Pvt. Ltd. vs. DCIT, Central Circle-2, has held on similar factual matrix that if the assessee has discharged the initial onus of furnishing the identity of the subscribers to the share capital, then additions cannot be made as to the share capital or share application money in the hands of the assessee-company. The Hon'ble Tribunal has taken the said view referring to the decision of the Hon'ble Supreme Court in the case of Lovely Exports 251 ITR 263 and of the Delhi High Court in the case of CIT vs. Stellar Investments Ltd. 192 ITR 287 and the coordinate bench decision in the case of DOT V. Pragati Fertilisers (P) Ltd., ITA 694/Vizag/2004. Taking into account the above factual scenario, and in deference to the principle laid down by the Hon'ble jurisdictional Tribunal, I find that the impugned addition made by the AO is without justification. -As a result, the AO is directed to delete the impugned addition. However, as laid down in the above referred decisions, it would be open to the AO to take action, if any, as per law, in the hands of the investors, if they do not have proper explanation as to source for the impugned investments."

10. In this case, the assessee has furnished the confirmation letters explaining the identity of the shareholder, address and sources of income of the contributor to the share capital along with the evidence for land holdings and copies of IT returns in 4 cases before the AO. The assessee has discharged its burden with regard to the identity, genuineness of share capital and also explained the source of share capital. The AO did not make any enquiry to verify the correctness of the information furnished by the assessee and bring any evidence to establish that the contributors to share capital does not have sufficient source or the source explained by the shareholders is bogus. The CIT(A) also observed that the shares were allotted in favour of the contributors. It is evident from the above that the revenue has not discharged its burden to prove that the shareholders did not have credit worthiness. The Ld.CIT(A) followed the order of this tribunal and the decision of Hon'ble Apex court in the case of Lovely Export cited and allowed the appeal of the assessee. Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

11. In the result, appeal of the revenue is dismissed.

The above order was pronounced in the open court on 18th May, 2018.

Sd/-
(वी.दुर्गा राव)
(V. DURGA RAO)
न्यायिक सदस्य/**JUDICIAL MEMBER**
विशाखापटणम /Visakhapatnam
दिनांक /Dated : 18.05.2018

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- M/s Gowthami Chemicals & Pesticides (Pvt.) Ltd. D.No.22-9-2, Lakshmi Dham, Veerabhadrapuram, Rajahmundry
2. राजस्व/ The Revenue –ACIT, Circle-1(1), Rajahmundry
3. The Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income-Tax(Appeals),Rajahmundry
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM