

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM

I.T.A. No. 3006/Mum/2023
(Assessment Year: 2013-14)

Ecokrin Hygiene Pvt. Ltd., Plot No. 77/4, Lakdi Bunder, Darukhana, Mumbai- 400010 PAN : AAACE8890R	Vs.	Deputy Commissioner of Income Tax, Circle-6(1)(1), Room No. 506, Aayakar Bhavan, 5 th Floor, M.K. Road, Marine Lines, Mumbai-400020
Appellant)	:	Respondent)

Appellant/Assessee by : Ms. Dinkle Hariya a/w Ms. Rashmi
Vyas, CA

Revenue/Respondent by : Shri P.D. Chougule, Sr. DR

Date of Hearing : 11.01.2024

Date of Pronouncement : 16.01.2024

ORDER

Per Padmavathy S, AM:

This appeal is against the order of Commissioner of Income Tax, Appeals, / National Faceless Appeal Centre [in short ‘the CIT(A)’] dated 06.07.2023 for the AY 2013-14. The assessee has raised the following grounds:

“I a) The learned Commissioner of Income-tax (Appeals) erred in confirming disallowance of Rs. 8,67,047/- made by the Assessing Officer out of business promotion expenses incurred by the Appellant.

b) The Appellant submits that on the facts and circumstances of the case as well as in the law, the said disallowance is illegal and unwarranted and therefore ought to have been deleted.

II. a) The learned Commissioner of Income-tax (Appeals) erred in confirming addition of Rs. 15,000/- made by the Assessing Officer under the provisions of section 41(1) of the Income Tax Act, 1961.

b) The Appellant submits that on the facts and circumstances of the case as well as in the law, the said addition is illegal and unwarranted and therefore ought to have been deleted.

III. The Appellant prays for appropriate relief.

IV. The Appellant firm craves leave to add, alter or amend the grounds of appeal at the time of hearing.”

2. The assessee is a private limited company carrying on the business of trading in hygiene and cleaning chemicals. The assessee filed the return of income for AY 2013-14 on 29.09.2013 declaring a total income of Rs. 89,78,510/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO completed the assessment by making the following disallowances:

- (1) Disallowance under section 14A – Rs. 4,11,451/-
- (2) Business Promotion Expenses – Rs. 8,67,047/-
- (3) Cessation of Liability under section 41(1) – Rs. 15,000/-

3. Aggrieved the assessee filed appeal before the CIT(A). The CIT(A) gave partial relief to the assessee by deleting the addition made under section 14A and confirmed the disallowance of Business Promotion Expenses and addition under section 41(1).

4. Aggrieved the assessee is in appeal before the Tribunal.

Disallowance of Business Promotion Expenses

5. During the year under consideration, the assessee has claimed a sum of Rs. 15,66,719/- as Business Promotion Expenses. The AO during the course of assessment called on the assessee to furnish the details of the said expenses. On perusal of the bills the AO noticed that an amount of Rs. 8,67,047/- was incurred for "food provided for 250 people". The assessee submitted before the AO that during the year the assessee had organized a get-together function of the business associates and the entire expenses in relation to this event was debited under the head Business Promotion. The AO disallowed the expenses incurred towards Food stating that the assessee has not provided any justification for arranging lunch for 250 persons such as invitation card, event details, nature of guests their purpose, etc. The AO further held that mere production of bills does not prove that the expense was incurred wholly and exclusively for the purpose of business. The CIT(A) upheld the disallowance stating that the assessee has not been able to prove that there was business connection of the get-together party and that the assessee has not discharge the onus that the expenditure is incurred with a view bring profit or monetary advantage.

6. Before us, the Id. AR submitted that the assessee is in the business of trading in hygiene and cleaning chemicals which are mainly used by food processing industry and most of the products are imported from suppliers in USA, Germany, Mexico, etc. The Id. AR further submitted that the assessee has a large customer base all across India which include customers such as Pepsi, Coco Cola, Parle Beverages, etc. The assessee with a view to expand the product range organized a get-together of its suppliers and customers at Mumbai so that the requirements of customers can be demonstrated to the suppliers. The Id. AR also submitted that the

suppliers came to India and were accommodated in Hotel Marine Plaza in Mumbai. The ld. AR drew our attention to the fact that the AO has allowed the claim of accommodation expenses incurred by the assessee towards the hotel stay of foreign suppliers. The ld. AR also drew our attention to the fact that the assessee made the payment towards lunch expenses to M/s Catering & Allied by an A/c Payee cheque and tax under section 194C is duly deducted on the same. The ld. AR submitted that given the volume of business and the customer base of the assessee, the AO is not correct in disallowing the lunch expenses for the reason that there is no justification for arranging lunch for 250 persons. The ld. AR also relied on certain judicial pronouncement in this regard.

7. The ld. DR on the other hand relied on the order of the lower authorities.

8. We have heard the parties and perused the material on record. The assessee has debited a sum of Rs. 15,66,719/- towards business promotion expenses which consists of expenses incurred towards hotel accommodation lunch and other expenses. The assessee claimed to have incurred this expense towards a get-together organized between the foreign suppliers and local customers in order to demonstrate the requirements of the customers to the suppliers and to expand the product range. We noticed that the AO did not raise any question with regard to the expense incurred towards hotel accommodation incurred by the assessee towards stay of foreign suppliers who flew into India to participate in the get-together. However, the AO has disallowed the food expenses for the reason that the assessee has not justified the supply of food to 250 people without any documentary evidence such as invitation card, event details, etc. In this regard, it is relevant to note that the assessee has submitted evidence of food supply by producing the invoice from the parties and the details of payments made to the supplier of food

after deducting tax at source under section 194C of the Act. It is also relevant to note that the assessee's accounts are duly audited and the Audit Report under section 44AB is part of the records. We further noticed that the AO has not recorded any adverse finding with regard to these hotel accommodation expenses incurred by the assessee towards stay of foreign suppliers who according to the assessee came down for the purpose of the get-together. From the perusal of statement of accounts we notice that the assessee has declared substantial revenue from operations and has incurred various expenses for the purpose of business which have been accepted by the AO i.e. The AO has not rejected the books of accounts of the assessee. Given the volume of business of the assessee, in our considered view without recording any adverse finding the AO is not correct in making the disallowance of the entire food expenses stating that the same is not incurred for the purpose of business. According to the Id AR the fact that the assessee has made payment to the caterer after deducting tax at source, also goes to substantiate the claim that the expenses incurred are legitimate. In our considered view, when the assessee has submitted the documentary evidence of having incurred the expenditure on which tax is deducted at source and when the related expenses of hotel expenditure is allowed, the AO is not right in disallowing the food expenses for the reason that the same is for large number of people. Therefore, we hold that the AO is not correct in disallowing the food expenses claimed by the assessee as part of business promotion expenses. Accordingly, we delete the disallowance made by the AO.

Cessation of Liability under section 41(1) of the Act.

10. During the course of assessment, the AO noticed that a sum of Rs. 15,000/- is outstanding for more than three years, the AO made an addition under section

41(1) of the said amount stating that the liability is outstanding for more than three years and that the assessee has not brought on record any evidence or documents to show that there is any intention to make the above mentioned payment. On further appeal, the CIT(A) upheld the disallowance.

11. The Id. AR submitted that as per Auditor Financial statements for the year under consideration, the said amount was outstanding on the date of balance-sheet which would mean that the assessee had not considered the said amount as Cessation of Liability in the books of accounts. The Id. AR therefore, submitted that the amount outstanding is an admitted liability and therefore, cannot be treated as income under section 41(1) merely for the reason that the liability is barred by limitation.

12. The Id. DR on the other hand, relied on the order of the lower authorities stating that the assessee has not brought anything on record to show that there is an intention to settle the outstanding liability.

13. We have heard the parties and perused the material on record. The AO has made the addition under section 41(1) of an amount of Rs. 15,000/- reflected in the statement of accounts as amount outstanding in the name of M/s Parul Shah and Co. towards professional fees payable to them. The reason for the AO to make the addition is that the liability is outstanding for more than three years and that the assessee has not brought anything on record to show that there is any intention to make payments towards the liability. In this regard, we noticed that the Jurisdictional High Court in the case of PCIT Vs. Batliboi Environmental engineering Ltd. (446 ITR 238) has considered a similar issue where it has been held that

“The Delhi High Court in the case of Jain Exports (P.) Ltd. (supra) has relied upon the decisions of the Supreme Court in the case of Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay AIR 1958 SC 328 and CIT v. Sugauli Sugar Works (P.) Ltd. [1999] 102 Taxman 713/236 ITR 518. In Sugauli Sugar Works (P.) Ltd. (supra), the Supreme Court has referred to the decision of the Division Bench of this Court in the case of Kohinoor Mills Co. Ltd. v. CIT [1963] 49 ITR 578. The Delhi High Court, after following these decisions concluded that merely because the liability is barred by limitation, it does not cease to be a debt. This view is also taken by this Court in the case of CIT v. Indian Rayon and Industries Ltd. [2011] 336 ITR 479. Therefore, the submission made by the Appellant that because the liability is barred by the period of limitation the same would be treated as income and added under section 41(1) of the Act cannot be accepted as no other decision contrary to the above is shown to us. Thus, the second question of law does not survive for consideration.”

14. We noticed in assessee's case that the assessee as part of the financial statements reflecting the outstanding liability it would mean that it is an acknowledge liability and that the assessee is intending to settle the liability in the future date. The ratio of the above jurisdictional high Court decision states that addition under section 41(1) cannot made merely for the reason that the period of limitation has expired. Applying the said ratio to assessee's case, we are of the considered view that the AO is not correct in making the addition under section 41(1) of an acknowledged liability of the assessee. Accordingly, we direct the AO to delete the addition.

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

Order pronounced in the open court on 16-01-2024.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

**SK, Sr. PS*

Sd/-
(MS. PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai