

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
(Through Video Conferencing)**

**BEFORE  
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 6143/Del/2016  
Asstt. Year – 2012-13

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| Rajeev Verma<br>2/5, Gupta Market,<br>Lajpat Nagar-4,<br>New Delhi – 110 024<br>PAN AABPV0413B | Vs. | ACIT<br>Circle-54(1), 15 <sup>th</sup> Floor,<br>Civic Centre,<br>J.L. Nehru Marg,<br>New Delhi 110 002 |
| (Appellant)  |     | (Respondent)  |

|                       |                          |
|-----------------------|--------------------------|
| Assessee by:          | Shri K. Sampat, Advocate |
| Department by :       | Shri Saras Kumar, Sr. DR |
| Date of Hearing       | 27/05/2020               |
| Date of pronouncement | 02/07/2020               |

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal has been preferred by the assessee against order dated 21.09.2016 passed by the Ld. Commissioner of Income Tax 18, New Delhi {CIT (A)} for assessment year 2012-13.

2.0 The brief facts of the case are that the assessee is engaged in the business of trading, testing and installation of scientific instruments with respect to measuring of energy, pollution control, measurement of energy flow etc. The return of income for the year under consideration was filed at an income of Rs. 31,28,220/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') and subsequently the case was selected for scrutiny under CASS guidelines. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had debited an amount of Rs. 61,52,014/- as business promotion expenses and the assessee was required to furnish detailed ledger account of these expenses. From the perusal of the ledger account it was observed that the major part of the expenditure was towards purchase of precious items, gold items and cash payments for various gift items. The AO required the assessee to further explain as to how these business promotion expenses had helped in promotion of the business as many of the payments were in cash or were for purchase of jewellery and other precious items. In response, the assessee submitted before the AO that due to plenty of competition in his line of business, the assessee has to

promote his business to maintain the existing business as well as to get fresh business and new customers and that such expenditure had helped in increasing its turnover as well as increasing the net profit. The assessee also submitted a chart depicting the turnover and the net profit for three years to demonstrate that the turnover and the net profit had been consistently increasing and had almost doubled. However, the AO was not satisfied with the submissions of the assessee. The AO also pointed out some discrepancies in the serial number of the bills and their corresponding dates and, thereafter, went on to disallow an amount of Rs. 50,32,880/- and added the same to the income of the assessee.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority who partly allowed the assessee's appeal by restricting the disallowance to Rs. 39,13,745/-.

2.2 Still aggrieved, the assessee has now approached the ITAT challenging the part confirmation of the addition/disallowance by the Ld. CIT (A) and has raised the following grounds of appeal:-

1. *“That the Ld. AO as well as the Ld. CIT(A) have erred in confirming addition of Rs. 39,13,745.00(2,56,726 + 36,57,019) out of business promotion expenses.*
2. *The Ld. AO as well as the Ld. CIT(A) have erred in not appreciating that the expenditure incurred by the assessee on business promotion is customary and prevalent in the industry and that such expenditure have resulted in increase in turnover as well as net profit of the assesses in the subsequent assessment year and is an allowable expenditure.*
3. *That the Ld. AO as well as the Ld. CIT(A) has not appreciated that the goods vide bill No. 1210 dated 22.10.2011 were received on approval basis and once goods approved the same were converted in to regular bill which is a customary practice and these are not against cash payments and will not make any difference.*
4. *That the Ld. CIT(A) has erred in observing that cheque No. 044997 on ICICI Bank has been issued in the name of ‘Sakshi Anand’ whereas it is issued in the name of “M/s. Bansal Sons” and the bank statement also reflects the same and thus conclusion so arrived is bad and opposed to the facts of the case.*
5. *That the above grounds of appeal are without prejudice to one another.”*

3.0 The Ld. AR submitted that the disallowance was bad in law in as much as the expenses were not in the nature of capital expenditure, they were not in the nature of personal expenditure, they were genuinely incurred and they had been incurred exclusively for the purposes of business. It was submitted that the findings of the AO in Para 2.2 of the assessment order that most of the payments have been made through cash was

incorrect as it was evident from the record that most of the payments had been made through cheque. The Ld. AR also drew our attention to a chart depicting the turnover of the assessee from assessment year 2011-12 to assessment year 2013-14 and also depicting the net profit for these three assessment years and pointed out that the turnover had almost doubled in these three years and so had the net profit. The Ld. AR submitted that the increase of turnover was due to the reason of incurrance of expenditure on business promotion. It was also submitted that the AO cannot step into the shoes of the businessman and decide as to what is the reasonable amount of expenditure to be incurred under any head. It was also pointed out that the accounts of the assessee were duly audited and there was no adverse comment by the auditor in this regard.

3.1 The Ld. AR also submitted that there were factually inaccuracies in the order of the Ld. CIT (A) in Para 5.17 regarding payment made to Sakshi Anand in as much as the payment had been made to M/s Bansal Sons and not Sakshi Anand as was evident from page 51 of the paper book. The Ld. AR also drew our attention to the list of customers of the assessee during the various assessment years placed at pages 54 to 56 of the paper

book and submitted that it is not the department's case that the assessee did not have customers or there was no increase in the number of customers. The Ld. AR also placed reliance on numerous judicial precedents to support the various proposition propounded by him in support of its contentions.

4.0 Per contra, the Ld. Sr. DR placed extensive reliance on the observations and findings of both the lower authorities and submitted that one has to not only consider the increase in turn over but also whether the expenditure was genuine or not. The Ld. Sr. DR submitted that the nature and quantum of the expenditure has to be considered and the assessee can not be permitted to simply debit any kind of expenditure of any amount under the business promotion expenditure without establishing its nexus with the assessee's business. The Ld. Sr. DR harped upon the fact that the purchase of jewellery and semi-precious items had no nexus with the assessee's business. It was prayed that the assessee's appeal be dismissed as appropriate relief had already been granted by the Ld. CIT (A).

5.0 We have heard the rival submissions and have also perused the material on record. The only question for our consideration is whether the Ld. CIT (A) was justified in part

confirming the disallowance made by the AO under business promotion expenditure. The AO while making the disallowance of Rs. 50,32,880/-, observed that the explanation of the assessee was not found acceptable as the assessee was unable to establish that these business promotion expenses has helped in promoting business. The AO also observed that assessee has neither submitted the details of customers to whom these gifts were given and against which what was the quantum of the sales. The AO also noted that there were some discrepancies in the serial number of the bills viz. 1259 was dated 21.10.2011 whereas bill bearing serial number 1210 was dated 22.10.2011. This led the AO to conclude that the expenditure was not genuine.

5.1 The Ld. CIT (A), after considering the assessee's submissions and while confirming part of the disallowance observed that while small gifts may be necessary to promote the products, gifting costly items to the employees of a public sector company may not be so permissible. The Ld. CIT (A) also observed that the nature and quantum of expenditure would necessarily be a relevant consideration and unusual purchase of jewellery without the reasonableness of expenditure being demonstrated and the genuineness of the expenditure being

established, the disallowance made by the AO was not without merit. Thereafter, the Ld. CIT (A) directed that the disallowance of jewellery items and payments made in cash were to be upheld whereas other standard items of gifts which did not look so unreasonable should be allowed.

5.2 Thus, a perusal of the observations made by the AO and the Ld. CIT (A) show that both the lower authorities have upheld the disallowance pertaining to jewellery items and semi precious items on the ground that the reasonableness of expenditure could not be established. Further, the Ld. CIT (A) also went to the extent of inferring that offering expensive gifts was a way to bribe of the employees of public sector undertakings. Thus, the Ld. CIT (A) has tried to add an altogether new dimension to the entire dispute. A perusal of the records would show that there is no denying that the gross turn-over of the assessee has been increasing. Even the profit returned by the assessee has shown the corresponding proportional increase. The only failure on the part of the assessee has been that he could not establish the business nexus of the impugned expenditure to the satisfaction of the lower authorities. It is the opinion of the lower authorities that the assessee could not establish a link



between the gifts given and the sales orders received. However, it may not be practically possible for all businesses to maintain a complete list of the gifts given to their various customers and demonstrate that a particular sales order was received as a result of a particular gift. The Act also does not prescribe demonstrating such live linkage. In the present case, there is no denial by the department that the assessee has been carrying on business regularly, the department also does not allege that there is any personal element involved in the impugned expenditure. It is also an accepted business practice in India that customary gifts are usually handed out during festive occasions. Although, handing out gold items or semi-precious items may be frowned upon by the revenue authorities, all the same it cannot be a reason for disallowing the expenditure, especially when it is settled law that the revenue cannot step into the shoes of a businessman and direct how the business should be conducted. However, we also feel that the reasonableness of quantum of expenditure *vis a vis* the turnover would have to be justifiable. Accordingly, it is our considered opinion that interest of justice would be served if the disallowance is restricted to 40% of the initial total disallowance of Rs. 50,32,880/-. It is so directed accordingly.

6.0 In the final result, the appeal of the assessee stands partly allowed.

**Order pronounced on 02/07/2020.**

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 02/07/2020

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi