

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM and Dr. ArjunLalSaini, AM]

ITA No. 2071/Kol/2019
Assessment Year: 2013-14

M/s. The Rajlaxmi Cotton Mills Pvt. Ltd PAN: AA ACT9363L	Vs.	D.C.I.T Cir-12(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	28.07.2020
Date of Pronouncement	31 .07.2020
For the Appellant	Shri P.K. HimmatSinghka, Ld.AR
For the Respondent	ShriSupriyo Pal, Ld. Add.CIT/DR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-25, Kolkata dated 28-06-2019 for the assessment year 2013-14.

2. Though the assessee has raised five grounds of appeal, ground nos. 1 and 5 are general in nature. Therefore, they are dismissed.

3. Ground nos. 2,3 and 4 read as under:-

2. For that the Ld. CIT(A) erred in confirming the order of the AO disallowing 10% of Misc. Expenses Rs. 1,44,727/-, 10% of Motor Car Expenses Rs. 3,00,930/-, Part of Sales Promotion Expenses Rs. 2,96,300/- and 10% of Conveyance Expenses Rs. 92,648/- whereas the same was incurred wholly and exclusively for business.

3. For that the Ld. CIT(A) erred in confirming the order of the AO disallowing various expenses on proportionate basis without rejecting the books of accounts.

4. For that the Ld. CIT(A) erred in confirming the order of the AO disallowing various expenses on Adhoc basis merely on conjectures and surmises without bringing any evidence on ground.

4. From the aforesaid grounds of appeal raised by the assessee, it is noted that the assessee is aggrieved by the action of the Id. CIT(A) in confirming the said ad-hoc disallowances on the expenditure claimed by the assessee without rejecting the books of account.

5. Brief facts as noted by the AO are that the assessee has returned (e-return) its income disclosing total income of Rs. 1,03,09,960/-. The assessee company is engaged in the business of manufacturing i.e. textiles, handloom and powerlooms. The AO noted that along with the return of income the assessee had filed Tax Audit Report (in short, the 'TAR'). The AO after issuing notices observed that the assessee company in its P & L Account has debited an amount of Rs. 14,47,268/- as Miscellaneous Expenses. However, since no satisfactory supporting evidences were produced for verification, he (AO) disallowed 10% of the said expenses, which comes to Rs. 1,44,727/-. Thus, he made an addition of Rs. 1,44,727/-. Likewise, the AO noted that the assessee company has debited an amount of Rs.30,09,296/- as Motor Car Expenses; expenses regarding sales promotion of Rs. 14,07,972/- and Conveyance expenses of Rs.9,26,476/- and since no satisfactory supporting evidences were produced for verification, 10% of motor car expenses to the tune of Rs.3,00,930/- was disallowed and in respect of conveyance expenses also 10% of such expenses i.e. Rs.92,648/- was disallowed.

6. Coming to sales promotion expenses as claimed by the assessee to the tune of Rs. 14,07,972/-, the AO observed that out of these expenses Rs. 2,96,300/- was made through cash and since there was no satisfactory supporting evidences were produced to support these transactions, therefore, he disallowed an amount of Rs.2,96,300/- and made addition accordingly.

7. On appeal, the Id. CIT(A) observed that in respect of motor car expenses Rs. 10 lakh has been paid in cash and Rs. 20 lakh through bank cheque. According to the Id. CIT(A), in respect of Sales promotion expenses Rs. 12 lakh has been paid through cheque and Rs. 2 lakh has been paid through cash. In respect of conveyance expense to the tune of Rs. 92,648/-, the Id. CIT(A) observed that all the payments were made in cash. The Id. CIT(A) noted that the total income shown by the assessee was at Rs. 1,61,72,539/- and the expenses

claimed towards motor car expenses was at Rs. 30,09,296/- and since assessee has expended Rs. 10 lakhs in cash, which needs verification and the ld. CIT(A) confirmed the addition made by AO on the ground that the payments were made mostly in cash. Aggrieved, the assessee is before us. Aggrieved the assessee is before us.

8. Having heard both the parties and after perusal of the records, we note that the AO has made ad-hoc disallowances in respect of motor car expenses, conveyance expense and miscellaneous expenditure claimed by the assessee. We note that the assessee is a private limited company and its accounts are audited. When the assessee claims any expenditure, then the assessee is bound to keep evidence/documents regarding the proof of expenditure as claimed/incurred by it. So when the AO calls for verification of the bills/invoices etc, then the assessee is supposed to furnish the same (bills/vouchers/invoices, if any) before the AO. We would like to emphasize that the AO is at liberty to disallow the expenditure if there is deficiency in the voucher/bill/invoices supporting the incurring of expenditure on the reason that expenditure are non-genuine and can be disallowed item-wise. However, the action of the AO to disallow the expenditure on ad-hoc basis and that too without rejecting the books of account cannot be accepted. However, in this case, though the assessee's accounts are audited, the AO has made a vague observation that the assessee has not produced satisfactory supporting evidence(s) for verification and as such he disallowed 10% of the motor car expenses, 10% conveyance expenses and 10% miscellaneous expenses, which action of the AO cannot be countenanced, since the AO could not have proceeded to estimate the same without rejecting the books of account, therefore, the ad-hoc additions of Rs. 3,00,930/-, Rs.92,648/- and Rs 1,44,727/- made/confirmed on account of motor car expenses, conveyance expenses and miscellaneous expenses are arbitrary exercise of power and so directed to be deleted.

9. Coming to the sales promotion expenses, the AO noted that the assessee has debited an amount of Rs.14,07,972/- as expenses related to sales promotion. The AO noted that Rs. 2,96,300/- was expended in cash. According to the AO, since no satisfactory supporting evidences were produced for verification, he disallowed Rs. 2,96,300/-. We would like to emphasize that the AO is at liberty to disallow the expenditure if there is deficiency in the voucher/bill/invoices supporting the incurring of expenditure on the reason that expenditure are non-genuine and can be disallowed item-wise. However, the action of the AO to disallow the expenditure simply because the assessee has made expenditure in cash cannot

be accepted subject of course to TDS provisions and expenditure incurred for any purpose which is an offence or which is prohibited by law. Since the AO has not disallowed the expenditure incurred by cash for violation of TDS provisions and on account of any prohibition by law, then the same cannot be disallowed by the AO. Subject to the discussion, if cash payment is incurred for an expenditure, and if the assessee fails to produce bills/invoices supporting the incurring of expenditure, then the AO is at liberty to disallow the expenditure being non-genuine. However, subject to the discussion, supra, he cannot disallow the expenditure simply because the assessee incurred expenditure through cash. Therefore, we direct the deletion of the addition of Rs. 2,96,300/- which was made towards sales promotion expenses. Thus, ground no.2, 3 and 4 are allowed.

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

Order is pronounced in the open court on 31 July 2020.

Sd/-
(Arjun Lal Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 31 July 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. The Rajlaxmi Cotton Mills Pvt. Ltd., 234/3A, AJC Bose Road, FMC Fortune, 4th floor, Kolkata-700 020.
 2. Respondent –DCIT, Cir-12(2), Kolkata.
 3. CIT(A)-25, Kolkata (sent through e-mail)
 4. CIT- , Kolkata.
 5. DR, ITAT, Kolkata. (sent through e-mail)
- By order,

/True Copy,

Assistant Registrar