IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA No. 1835/Mum/2021
(Assessment Year 2017-18)

The DCIT Cir 4(2)(1) Room No. 642, 6th Floor, Aayakar Bhavan, M.K. road, Mumbai-400 020	Vs.	M/s. Goddress Pharmaceuticals P. Ltd. Unit No. 304, A-Wing, Western Edge, Near Western Express Highway, Borivali (East), Mumbai-400 066
(Appellant)		**(Respondent)**

PAN No. AADCG6434C

Assessee by	:	Shri. Subodh Ratnaparkhi, AR
Revenue by	:	Smt. Sonia Kumar, DR

Date of hearing: 23.05.2022
Date of pronouncement : 29.06.2022

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Deputy Commissioner of income tax, Circle – 4 (2) (1), Mumbai (the learned AO) against the order passed by the National faceless appeal Centre (NFAC) the learned CIT – A), Delhi dated 18/8/2021 assessment year 2017 – 18 wherein the assessee filed an appeal before eight against the order passed by the Asst Commissioner of income tax – 12 (2) (2), Mumbai u/s 143 (3) of the act was allowed. Therefore, assessing officer is

aggrieved with that order and has preferred this appeal raising following grounds.

> *"Whether on the facts and in the circumstances of the case and in law Ld. CIT(A) has erred in deleting the disallowance of expenditure on Business Promotion/Travelling of Rs.1,88,95,898/- for business purpose without considering the facts that assessee has failed to justify the excess expenditure incurred on business promotion.*
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> *2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.23,46,255/- as unaccounted cash deposits u/s 69A without appreciating the facts that assessee has failed to prove the genuineness and creditworthiness of the cash depositors during assessment proceedings.*
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> *3. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.23,46,255/- as unaccounted cash deposits u/s 69A without providing reasonable opportunity to AO to verify the additional documents/evidences produced by the assessee in accordance with Rule 46A of the Income Tax Rules and deciding the issue in favour of assessee.*
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> *4. The appellant craves leave to amend or alter any ground or add new ground which may be necessary."*

02. Brief facts of the case shows that assessee is a company engaged in the business of manufacturing of drugs and

pharmaceuticals. It filed its return of income on 30/10/2017 and income of ₹ 15,125,430/–. The return of the assessee was picked up for scrutiny.

03. During the course of assessment proceedings, the learned that AO noted that assessee has claimed business promotion distribution and travelling expenditure. On examination of the details see found that the Ledger of the expenses did not have any proper correlation and the amounts were shown mostly in the form of reimbursement to the employees and directors, reputation of names of employees in many of the expenses. Initially the assessee did not provide the complete detail is called for however on receipt of show cause notice the assessee provided the said details however it also did not contain the names of retailers and assessee also did not file any collation with the sales affected by them on account of spending of the above money. Further the learned AO noted that assessee has booked a hotel rooms and flight tickets from Messer's Akbar travels private limited to whom notice u/s 133 (6) was issued and in response to the notice that company denied to have any account of the assessee. Accordingly out of the total expenditure of ₹ 75,583,590/– the learned assessing officer disallowed one fourth of the business promotion expenditure amounting to ₹ 18,825,898/–.

04. The learned assessing AO also found that during the and. Cash deposit of ₹ 3,385,274 was made, assessee in response stated that ₹ 2,346,255 has been deposited by the various debtors. AO issued notices u/s 133 (six) to all

those letters who sent the replies to the assessing officer. However, the AO held that it does not conclusively prove the genuineness and creditworthiness nor the identity of the entities who have deposited cash. Accordingly, he made an addition of ₹ 2,346,255/– u/s 69A of the income tax act. Accordingly the assessment order dated 24/12/2019 was passed determining the total income of the assessee at ₹ 36,367,583/– by passing an order u/s 143 (3) of the act.

05. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A. Before the learned CIT – A assessee reiterated the details filed before the learned assessing officer with respect to the various expenditure and given the explanation for the same. With respect to the information obtained by the assessing officer from Akbar Travels private limited u/s 133 (6) of the act, assessee submitted that it has not dealt with that company but has dealt with Akbar holidays private limited. It also submitted the confirmation as well as form number 16 A issued to that party. On the basis of this the learned CIT – A held that that assessee submitted the evidences such as ledgers, bills, bank statements which prove that the expenditure has been incurred for the purpose of the business promotion and travelling accordingly he deleted the ad hoc disallowance is of one fourth expenditure on business promotion and travelling of ₹ 18,895,898/–.

06. With respect to the cash deposit added u/s 69A of the act the learned CIT – A noted that assessee has submitted the name of the parties, permanent account number of the parties, addresses, location and the amount deposited by the debtors amounting to ₹ 2,346,255 along with the confirmation. Therefore, he deleted the addition holding that the cash deposit is explained properly.

07. The learned assessing officer is aggrieved with that order and has preferred this appeal before us. Ground number 1 is with respect to the deletion of the addition of Rs 1 88,25,898/– being one fourth of the expenditure on business promotion and travelling of the expenditure.

08. The learned departmental representative supported the order of the learned that assessing officer.

09. The learned that authorised representative submitted a detailed paper book containing 234 pages. He referred to the note on the nature of marketing and business promotion expenses incurred by the assessee along with the breakup of the business promotion expenditure and the Ledger of various business promotion expenditure. It also submitted the Ledger of the Akbar holidays private limited along with the confirmation. Therefore it was stated that there is no reason to uphold the ad hoc disallowance of one fourth of the total expenditure which is deleted by the learned CIT – A.

010. We have carefully considered the rival contention and perused the orders of the lower authorities. In the

present case, the learned CIT – A examine the relevant details of the consultation, business promotion, travelling and business promotion expenditure. During the course of assessment proceedings, he also taken note of notice is sent to the wrong party. With respect to the parties with whom the assessee has transacted he also verified the confirmation as well as tax deduction at source certificate. With respect to the connection of sales with respect to the expenditure he categorically noted that assessee company has registered a growth of hundred percent in the same year and therefore there is a justification for growth of the turnover of the company as well as increase in the respective expenditure. He also verified the sample bills along with the Ledger accounts and the bank statement. The learned departmental representative could not show that what else could have been required to be verified by the learned CIT – A which he has failed to do. Even otherwise, the learned assessing officer has disallowed one fourth of such expenditure purely based on conjectures and surmises. In view of this, we do not find any infirmity in the order of the learned and CIT – A in deleting one-fourth disallowance of various expenditure after examination of complete details. Accordingly, ground number 1 of the appeal is dismissed.

011. Ground number 2 and 3 is with respect to the cash deposited by the assessee in its bank account amounting to ₹ 2,346,255 that has been added by the learned assessing officer as unaccounted cash deposits u/s 69A of the income tax act. The assessee submitted that these

are the cash deposits made by various debtors of the assessee at different places. Before us assessee has submitted, the party wise details of certain cash deposits in bank account during the demonetization by debtors along with their confirmation from those parties as well as the acknowledgement of return of income filed by those parties. The total cash deposit was also reconciled. Based on this the learned and CIT – A deleted the addition. He also verified the complete details filed by the assessee with respect to the parties, their permanent account number, address, location and the amount deposited. In view of this we do not find any reason to uphold the addition made by the learned assessing officer and therefore we confirm the order of the learned CIT – A in deleting the addition u/s 69A of the act. Accordingly, ground number 2 and 3 of the appeal of the learned that AO is dismissed.

012. Accordingly, appeal of the learned AO is dismissed.

Order pronounced in the open court on 29.06.2022.

Sd/-	Sd/-
(KULDIP SINGH)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.06.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT

5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai