

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

Date of decision:-21.02.2013

1. I.T.A. No.287 of 2012 (O & M)

The Commissioner of Income Tax-III, Ludhiana

...Appellant

Versus

M/s Shree Krishna Enterprises

...Respondent

2. I.T.A. No.298 of 2012 (O & M)

The Commissioner of Income Tax-III, Ludhiana

...Appellant

Versus

M/s Shree Krishna Enterprises

...Respondent

***CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MS. JUSTICE RITU BAHRI***

Present:- Mr. Rajesh Katoch, Advocate
for the appellant(s).

HEMANT GUPTA J.

**C.M. No.30249-CII of 2012 in
ITA No.287 of 2012**

Application is allowed as prayed for.

**C.M. No.31482-CII of 2012 in
I.T.A.No.298 of 2012**

Application is allowed as prayed for.

**C.M. No.31483-CII of 2012 in
I.T.A.No.298 of 2012**

Application is allowed and the delay of 30 days in filing the appeal is hereby condoned.

**ITA No.287 of 2012 &
ITA No.298 of 2012**

This order shall dispose of two appeals preferred by the revenue under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') arising out of the orders dated 28.3.2012 passed by the Income Tax Appellate Tribunal, Amritsar (for short 'the Tribunal') in ITA No.127/(ASR)/2011 and ITA No.311/(ASR)/2011 relevant to the assessment year 2007-08.

The assessee, is distributor of a mobile service provider and in the course of its activity has claimed distribution expenses. The Assessing Officer rejected the books of accounts and disallowed the distribution expenses of ₹1,07,36,450/-. Pursuant to an order passed by the Commissioner of Income Tax (Appeals), the Assessing Officer in his report dated 11.2.2011 found that a sum of Rs.75,68,134/- to be genuine expenses except to the extent of Rs.25,014/-. The remaining amount was not allowed as distribution expenses. The Commissioner of Income Tax (Appeals), Ludhiana, passed an order restricting the disallowance to 60%. The relevant

extract reads as under :-

“4.1 As far as, balance addition of Rs.31,68,316/- is concerned, the A.O. in the last paragraph of his report dated 11.02.2011 has stated that looking to the voluminous nature of the entries, the same cannot be verified at his end except for some small accounts in respect of M/s Mohindra Telecom and M/s Majestic Communication, Moga. Despite being given ample opportunities both to the A.O. and the appellant neither the A.O. nor the appellant could state that how much expenses related to sales of E-Tops, Recharge Coupons and Sims. Hence, under the circumstances, at the best it would be fair and justifiable to restrict the disallowance to the extent of 60% and balance 40% is directed to be deleted.”

The Revenue as well as Assessee filed separate appeals aggrieved against the order passed by the Commissioner of Income Tax (Appeals). The Tribunal accepted the Assessee's appeal while dismissing the appeal of the Revenue. The Tribunal returned the following finding:-

“10. After hearing the parties and perusal of the record, we are of the view that the A.O. initially made the addition of Rs.1,07,36,450/-, which in the remand proceedings was reduced by Rs.75,68,134/-. It is also not disputed that the A.O. in the remand proceedings did not verify the books of account and other documentary evidences produced by the assessee looking to the voluminous nature of entries. The A.O. preferred to verify the small amount in respect of M/s Mohindra Telecom, M/s Majestic Communication, Moga. In case the AO does not verify the books of

account produced before him, the AO then is not authorized to come to the conclusion adverse to the assessee. So the learned CIT (A) without any basis or cogent material on record has observed that the assessee did not appear and has not submitted the expenses in relation to the sales of various E-top, Recharged Coupons and Sims. Therefore, the learned CIT(A) was not further justified in coming to the conclusion by restricting the disallowance at 60% and deleting the same at 40% only. The assessee has discharged its onus by producing documentary evidences/books of account before the A.O., which were made available before this Bench also and, therefore, the AO was not justified in making any addition on this account. The learned CIT(A) is not justified in sustaining any addition on the said account. Therefore, Ground Nos.1 to 3 of the assessee are allowed and all the grounds of the Revenue are dismissed.”

The revenue has, thus, filed two appeals against the orders passed by the Tribunal. Learned counsel for the appellant has vehemently argued that the assessee has failed to produce any documents to justify the distribution expenses, therefore, such expenses could not be allowed by the Tribunal on arbitrary basis.

We do not find any merit in such argument. The Commissioner of Income Tax (Appeals), Ludhiana, recorded a finding that the Assessing Officer has reported that the voluminous nature of entries cannot be verified. Once the Assessing Officer himself has failed to verify the entries, there is no reason to disallow the distribution expenses. It is a rule of thumb which was applied by the

Commissioner of Income Tax (Appeals), Ludhiana to allow expenses to the tune of 40%, which has been found to be unjustified by the Tribunal. The Tribunal has allowed the expenses to the extent of 60%. The Assessing Officer himself has not verified the entries though, it recorded finding that the distribution expenses to the extent of Rs.75,43,120/- as genuine. There was no reason, without verification of the record to decline the remaining amount as well. Therefore, the distribution expenses have rightly been allowed by the Tribunal. Such finding does not give rise to any question of law. It is finding of fact as to whether the assessee is entitled to the entire claimed amount as distribution expenses or not.

We do not find any substantial question of law arising out of these appeals.

Both the appeals are hereby dismissed.

**(HEMANT GUPTA)
JUDGE**

February 21, 2013
Vijay Asija/Vimal

**(RITU BAHRI)
JUDGE**