

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

श्री पी.एम. जगताप, लेखा सदस्य, एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष

BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER AND

SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील सं. / ITA no. 6005/Mum./2010

(निर्धारण वर्ष / Assessment Year : 2002-03)

Kellogg India Pvt. Ltd.
501, Delphi "B" Wing
Hiranandani Business Park
Powai, Mumbai 400 076

..... अपीलार्थी /
Appellant

बनाम v/s

Asstt. Commissioner of Income Tax
Circle-10(1), Mumbai

..... प्रत्यर्थी /
Respondent

स्थायी लेखा सं./ Permanent Account Number – AAACK1748A

आयकर अपील सं. / ITA no. 5778/Mum./2010

(निर्धारण वर्ष / Assessment Year : 2003-04)

Kellogg India Pvt. Ltd.
501, Delphi "B" Wing
Hiranandani Business Park
Powai, Mumbai 400 076

..... अपीलार्थी /
Appellant

बनाम v/s

Asstt. Commissioner of Income Tax
Circle-10(1)(2), Mumbai

..... प्रत्यर्थी /
Respondent

स्थायी लेखा सं./ Permanent Account Number – AAACK1748A

निर्धारिती की ओर से / Assessee by : Mr. Murlidhar

राजस्व की ओर से / Revenue by : Mr. Mohit Jain

सुनवाई की तारीख /
Date of Hearing – 01.08.2012

आदेश घोषणा की तारीख /
Date of Order – 10.08.2012

आदेश / ORDER

अमित शुक्ला, न्यायिक सदस्य के द्वारा /
PER AMIT SHUKLA, J.M.

The present appeals preferred by the assessee, are directed against the impugned separate orders dated 21st May 2010 and 16th April 2010, passed by the learned Commissioner (Appeals)-XXI, Mumbai, for the quantum of assessment passed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*") for assessment years 2002-03 and 2003-04 respectively. The issues involved in these two appeals are inter-connected, arising out of the same set of facts. Both the appeals pertain to the same assessee and were heard together. As a matter of convenience, therefore, both these appeals are being disposed off by way of this consolidated order.

2. The assessee company is engaged in the business of manufacturing, packaging and marketing and ready to eat cereal products and other convenient food. It has a very popular brand as "*Kellogg*" which is well known globally.

3. We first take up assessee's appeal in **ITA no.5778/Mum./2010, for assessment year 2003-04.**

4. In ground no.1, the assessee has challenged disallowance of traveling expenses considered as prior period.

5. This addition is made by the Assessing Officer on the ground that the bills pertaining to travel expenditure are for prior period which cannot be allowed in the year under appeal. Though the Assessing Officer did not doubted the genuineness of the expenditure, however, since they related to prior period, the same were disallowed.

6. The assessee, being aggrieved, went in appeal, wherein before the Commissioner (Appeals), the assessee submitted that the expenditure incurred are on account of travelling by its employees and are in the nature of reimbursement of the claim made by the employees once they submit

their bills to the assessee company. The details of bills were furnished before the Commissioner (Appeals) but he did not agree with the contentions of the assessee and upheld the findings of the Assessing Officer that the assessee has failed to prove that the liability in respect of prior period expenditure crystallized during the year. The assessee, being not satisfied with such a finding given by the Commissioner (Appeals), is in further appeal before the Tribunal.

7. The learned Counsel, appearing on behalf of the assessee, submitted before us that the expenditure incurred by its employees on account of local travel, are reimbursed to them when they submit their bills. He pointed out that these are very petty expenses though incurred in earlier years, but bills have been submitted in this year. The details of these expenses have been placed at Pages-1 to 15 of the paper book. He submitted that the over-all aggregate payments which were meant for earlier years are only for a sum of ₹ 63,894.

8. On the other hand, the learned Departmental Representative submitted that the basic principle is that the expenditure should pertain to this year and, admittedly, these expenditures relate to prior period and, therefore, it has been correctly disallowed by the Assessing Officer and confirmed by the Commissioner (Appeals).

9. After carefully considering the rival contentions and on perusal of the material available before us, it is seen that these are the expenditure incurred by the employees of the assessee on account of travel which are of very petty sums. Once the employees have submitted their bills to the assessee company, the same has to be reimbursed. Insofar as the assessee is concerned, as and when the bills were submitted, payments have been made and has been claimed as business expenditure. In this case, neither the Assessing Officer nor the Commissioner (Appeals) has disputed the genuineness of expenditure. Looking to the fact that the assessee has a substantial turnover, such reimbursement of expenditure cannot be disallowed simply on the ground that travelling by the employees have been undertaken in the earlier years and bills by them are submitted in this year.

Since they are directly related to business of the assessee, the same has to be allowed. Consequently, we set aside the impugned order passed by the Commissioner (Appeals) and allow the ground raised by the assessee.

10. In ground no.2, the assessee has made an alternative claim that if the said reimbursement of expenditure on account of travelling expenses by the employees is not allowed in this year, then the same should be allowed in assessment year 2002-03.

11. In view of our finding in ground no.1, this ground becomes infructuous. Consequently, this ground is dismissed as infructuous.

12. In ground no.3, the assessee has challenged the disallowance of ₹ 23,01,621, on account of foreign travel expenditure undertaken by its employees.

13. The Assessing Officer has disallowed the foreign travel expenditure undertaken by its employees to various countries, holding that the expenditure incurred is not for business purpose as the assessee has no business transactions i.e., sale or purchase with these countries.

14. Being aggrieved, the assessee carried the matter before the first appellate authority, wherein the Commissioner (Appeals) confirmed the findings of the Assessing Officer even though all the details of expenditures and evidences were sent for examination by the Assessing Officer in the remand proceedings. Aggrieved, the assessee is in further appeal before the Tribunal.

15. Learned Counsel for the assessee submitted before us that these expenditures have been undertaken by the higher officials of the company for business meetings at various parts of the world and to discuss various business strategies in relation to the business in India. By way of an illustration, he pointed out that one of the expenditure pertained to Mr. Anup Sharma, who is the Finance Director of the company and has undertaken the business trip in the various countries for discussing various promotional and business strategies. After undertaking such business trips, he has submitted

the bills and details wherein it has been specifically shown that these are meant for the purpose of business meetings. Sample copies of such bills have also been placed in the paper book. Likewise, he has given the details of other employees also. He submitted that once these employees have undertaken business trip as per the direction of the management and submitted their bills, then, insofar as the assessee is concerned, it is for the business purpose only and the same cannot be disallowed on the ground that it is either for personal in nature or for non-business purposes.

16. On the other hand, the learned Departmental Representative submitted that the onus is on the assessee to prove that the expenditure have been incurred is wholly and exclusive for the purpose of business and there is a categorical finding by the Assessing Officer that the assessee do not have any business transactions in these countries. He relied on the findings of the learned Commissioner (Appeals).

17. We have carefully considered the rival contentions and also perused the material on record. On a perusal of the evidences furnished by the learned Counsel, it is seen that the assessee's senior officials have undertaken trips to foreign countries for business purposes, which is evident from the details submitted by its employees along with the expenditure incurred during the course of foreign visit. The assessee, being a global company, which has business interest all over the world, such kind of business trip by senior officials cannot be disallowed simply on the reason that the assessee does not have direct transactions of sale or purchase from such countries. Such a myopic perception cannot be upheld in this era, as there can be several reasons in relation to the business. The term "*wholly and exclusively for the business purpose*" has a very wide meaning and the assessee's perception as to what is the business purpose has to be given importance. The only requirement is that the assessee has to prove that such expenditures are genuine and for its business purposes. From the material placed on record and also, going by the findings of the Assessing Officer as well as the Commissioner (Appeals), we find that there is no infirmity either in the bills or in the details furnished by the assessee.

Therefore, we do not find any reason to confirm the disallowance under the head "*Foreign Travel Expenses*". Consequently, we set aside the impugned order passed by the Commissioner (Appeals) and allow the ground raised by the assessee.

18. In ground no.4, the assessee has challenged disallowance of ₹ 1,19,30,783, on account of advertisement expenses paid to advertisement agency i.e., Hindustan Thomson Associates.

19. The Assessing Officer disallowed the claim of the assessee on the ground that the services have been rendered in earlier years and, therefore, the same cannot be allowed in this year even if the bills have been raised by these parties in this year.

20. In first appeal, the assessee submitted before the Commissioner (Appeals), the entire details of advertisement expenditure and contended that the bills have been raised in this year and, therefore, the payments which have been made in pursuance of such bills are to be allowed in this year. The Commissioner (Appeals), after referring to the details submitted by the Assessing Officer, confirmed the findings of the Assessing Officer on the ground that the expenditure related to the earlier years and since assessee is following mercantile system of accounting, therefore, the same is to be disallowed in this year.

21. Before us, the learned Counsel drew our attention to the details as are appearing at Page-51 of the paper book and submitted that most of the details pertained to current assessment year only and in some of the cases, bills were dated March 2002. Further, he submitted that even the bills which are dated March 2002, the same were received by the assessee in this year on which the payment has been made. In support of this contention, he has referred to such details as have been placed in the paper book. Alternatively, the learned Counsel submitted that there is no tax advantage to the assessee if it is taxed either in the earlier year or in this year.

22. Learned Departmental Representative, on the other hand, reiterated the submissions, as was made in ground no.1, that the expenditure should pertain to the year in which the claim has been made and the assessee is following mercantile system of accounting, has to show the expenditure on accrual basis.

23. We have heard the rival submissions and perused the material on record. From the statement submitted at Pages-51-52 of the paper book, it is observed that most of the bills are dated from April to August 2002 which is falling in the present assessment year. This vital fact has not been taken into consideration either by the Assessing Officer or by the Commissioner (Appeals). Moreover, from the details which are pertaining to March 2002, it is seen that the bills have been received in the office of the assessee in this year and, therefore, the payments have been made in this year. Since both the authorities have not examined this issue properly, we set aside the impugned order passed by the Commissioner (Appeals) and restore this ground to the file of the Assessing Officer and direct him to examine these details and decide afresh in accordance with law after giving due opportunity of hearing to the assessee.. Thus, this ground is allowed for statistical purposes.

24. Ground no.5, is an alternative ground that the Assessing Officer be directed to allow the expenses in assessment year 2002-03.

25. In view of our findings given above, this ground has become infructuous. Accordingly, the same is dismissed as infructuous.

26. परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

26. In the result, assessee's appeal is partly allowed.

We now take up assessee's appeal in **ITA no.6005/Mum./2010, for assessment year 2002-03.**

27. In ground no.1, the assessee has challenged the disallowance of ₹ 39,47,212, in respect of free food allowance.

28. Facts, which are relevant for our adjudication, are that this is the second round of appeal and in the first round, the Assessing Officer has made 50% of disallowance out of these expenses on ad-hoc basis. This was further reduced to 25% by the Commissioner (Appeals). Against this disallowance, the assessee went in appeal before the Tribunal, wherein the Tribunal set aside this matter before the Assessing Officer to examine this issue afresh.

29. In the second round of appeal, the Assessing Officer, in pursuance of the directions given by the Tribunal, made 100% of disallowance at ₹ 39,47,212, on the ground that these expenses are already a part of cost of raw material and processing of the said free food and is included in manufacturing cost and purchases. Such a disallowance of 100% has been confirmed by the Commissioner (Appeals) on the ground that it amounts to claim of double deduction.

30. Before us, the learned Counsel for the assessee submitted that once the matter has been set aside by the Tribunal, the assessee cannot be put into a worst situation than what it was at the time of original assessment. Since after giving effect to the order of the Tribunal, there cannot be any scope of enhancement of assessment and, therefore, the disallowance made in the original assessment should stand. In support of this contention, he relied on the judgment of Hon'ble Supreme Court in **Mcorp Global (P) Ltd. v/s CIT, [2009] 309 ITR 434 (SC)**.

31. On the other hand, the learned Departmental Representative submitted that this is clearly a case of double deduction and does not amount to any kind of enhancement of assessment as the verdict of the Tribunal was to examine the issue afresh.

32. We have heard the rival contentions and perused the material available on record. It is now a settled proposition of law that the Appellate Tribunal under section 254(1) of the Act, had no power to take back the benefit conferred by the Assessing Officer or enhance the assessment. Once the

matter has been restored by the Tribunal, the income cannot be enhanced from what was determined at the time of original assessment proceedings, which was the subject matter of dispute before the Tribunal. This proposition of law has been upheld by the Hon'ble Supreme Court in **Hukumchand Mills Ltd. v/s CIT, [1966] 62 ITR 232 (SC)**, and had now been reiterated in Mcorp Global (P) Ltd. (supra). Therefore, in view of this proposition of law, the enhancement of assessment by making 100% disallowance in respect of free food allowance cannot be sustained and the same is restricted to 50%, as was made by the Assessing Officer in the original round of proceedings. Consequently, this ground is allowed to this extent only.

33. Ground no.2, relates to disallowance of travelling expenses as prior period in assessment year 2003-04, in the current assessment year and ground no.3, relates to disallowance of advertisement expenditure, do not hold ground in view of our findings given in ITA no.5778/Mum./2010, for assessment year 2003-04. Consequently, these grounds are dismissed as infructuous.

34. परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

35. In the result, assessee's appeal is partly allowed.

आदेश की धोषणा खुले न्यायालय में दिनांक: 10th August 2012 को की गई ।
Order pronounced in the open Court on 10th August 2012

Sd/-
पी.एम. जगताप
लेखा सदस्य
P.M. JAGTAP
ACCOUNTANT MEMBER

Sd/-
अमित शुक्ला
न्यायिक सदस्य
AMIT SHUKLA
JUDICIAL MEMBER

मुंबई MUMBAI, दिनांक DATED: 10th August 2012

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

- (1) निर्धारिती / The Assessee;
- (2) राजस्व / The Revenue;
- (3) आयकर आयुक्त(अपील)/ The CIT(A);
- (4) आयकर आयुक्त / The CIT, Mumbai City concerned;
- (5) विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / The DR, ITAT, Mumbai;
- (6) गार्ड फाईल / Guard file.

सत्यापित प्रति / True Copy

आदेशानुसार / By Order

प्रदीप जे. चौधरी / Pradeep J. Chowdhury

वरिष्ठ निजी सचिव / Sr. Private Secretary

उप / सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai