आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'C'

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.1778/Ahd/2016**

*निर्धारण वर्ष/***Asstt. Year: 2012-13**

ACIT,Cir.6(1), Ahmedabad.	Vs.	Armee Infotech 1002, Akik Building Opp: Rajpath Club, SG Highway, Ahmedabad 380 0054. PAN : AAIFA 4964 D

आयकर अपील सं./ **ITA No.1900/Ahd/2016**

*निर्धारण वर्ष/***Asstt. Year: 2012-13**

AND

ITA No.2324/Ahd/2018

Asstt.Year : 2014-15

Armee Infotech 1002, Akik Building Opp: Rajpath Club, SG Highway, Ahmedabad 380 0054.	Vs.	ACIT,Cir.6(1), Ahmedabad.

अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Assessee by :	Shri Hardik Vora, Advocate
Revenue by :	Shri Mukesh Kumar Sharma, Sr.DR

*सुनवाई की तारीख/*Date of Hearing : 21/12/2021

*घोषणा की तारीख /*Date of Pronouncement: 11/01/2022

*आदेश/***O R D E R**

PER RAJPAL YADAV, VICE-PRESIDENT

In assessment year 2012-13 assessee and the Revenue are in cross-appeal against order of the ld.CIT(A) dated 28.4.2016; whereas in

the asstt.Year 2014-15, the assessee alone has impugned order of the ld.CIT(A)-6 dated 20.9.2018. The issues in all these three appeals are inter-connected with each other, and therefore, we heard them together and deem it appropriate to dispose of them by this common order.

2. First we take appeal of the Revenue in the Asstt.Year 2012-13 i.e. ITA No.1778/Ahd/2016. However, if any ground is found to be inter-connected with any other issues agitated in rest of two appeals, then same will be taken up together.

3. Ground No.1 raised by the Revenue reads as under:

> *"The ld.CIT(A) has erred in law and on facts by restricting the disallowance of Rs.3,48,64,200/- in respect of provision of batteries to Rs.59,16,200/- without properly appreciating the facts of the case."*

This ground is inter-connected with ground no.1 of the assessee's appeal i.e. ITA No.1900/Ahd/2016.

4. The ld.Assessing Officer has made a disallowance of Rs.3,48,64,200/- in respect of provision for batteries. Out of this disallowance, the ld.CIT(A) has restricted disallowance to the extent of Rs.56,16,000/- and rest has been deleted. The Revenue is in appeal against deletion of disallowance; whereas the assessee in its appeal is challenging confirmation of disallowance to the extent of Rs.59,16,000/- .

5. Brief facts of the case are that, the assessee firm at the relevant time was engaged in the business of installation of computer and providing after-sale services; sale of computers and peripheral and collection from Government department on behalf of suppliers of computers. It has filed its return of income electronically on 30.9.2012 declaring total income at Rs.4,13,53,274/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2)

was issued on 7.8.2013. On scrutiny of the accounts, it revealed to the AO that the assessee has shown gross turnover of Rs.1,02,32,11,318/-. On this, a gross profit at the rate of 14.35% was shown at Rs.14,67,92,227/-. The AO further found that the assessee has shown long term provision of Rs.3,48,64,200/-. This provision was made for replacement of batteries. The ld.AO issued a show cause notice as to how this provision is admissible. The AO was of the view that expenditure which is deductible one for the purpose income-tax should be towards liability actually existing at the time. He further observed that if an assessee put aside certain amount, which may become an expenditure on the happening of an event, is not be construed as expenditure, because such liability would be contingent in nature. The AO made reference to the decision of Hon'ble Karnataka High Court in the case of Mysore Lamps Works Ltd. Vs. CIT, 52 taxman 260 (Kar). He also made reference to decision of Hon'ble Supreme Court in the case of Indian Molasses Co. P.Ltd. Vs. CIT, 37 ITR 66 (SC).

6. In response to the show cause notice of the AO, it was contended that the assessee has a total turnover of more than Rs.102 crores. It has shown GP margin at 13.35%. It has made sales mostly to schools, colleges and different computerization projects. The assessee pointed out that purchase orders were received by it from IL&FS Education. As per the technical configuration of UPS, stabilizer and site net working it was required to replace batteries. The assessee has placed on record details of battery replacement as per annexure-2 before the AO. It has also submitted copies of agreement exhibiting as to why batteries were required to be replaced.

7. The ld.AO has gone through all these details. He has disallowed claim of the assessee for two reasons, viz. it is a contingent liability which is to be materialized after five years, and secondly, he has verified purchases of batteries, and out of total purchases, he found

batteries purchased to the extent of Rs.1,56,78,802/- from five entities were not genuine. Vendors have not been confirmed sales made to the assessee. On the basis of this reasoning, the ld.AO disallowed the claim of the assessee.

8. Dissatisfied with finding of the AO, the assessee carried the matter in appeal before the ld.first appellate authority. The assessee had raised two fold of submissions. In the first fold of submissions, it was contended that provision made by it was in consonance with Accounting Standard 29 issued by the Institute of Chartered Accountants of India. It has made this provision on the basis of contractual liabilities, and this provision has been made in a scientific manner. The assessee relied upon the latest judgment of Hon'ble Supreme Court in the case of Rotork Control India P.Ltd. Vs. CIT,314 ITR 62 (SC). In its next fold of submissions, it was contended that in the Asstt.Year 2010-11, similar provision was made. The ld.AO has disallowed claim of the assessee. The assessee took the matter before the ld.CIT(A) who partially allowed the claim. Assessee and Revenue approached the Tribunal, who set aside issue to the file of the AO for verification.

9. The ld.AO on re-verification has allowed claim of the assessee vide assessment order dated 31.3.2016 passed under section 143(3) r.w.s. section 254 of the Act. The ld.CIT(A) has considered these three fold of submissions, and was satisfied with the explanation of the assessee. The ld.CIT(A) has reproduced clause of agreement under which the assessee was required to replace batteries. The ld.CIT(A) thereafter made reference to the proposition laid down by the Hon'ble Supreme Court in the case of Rotork Control India P.Ltd. Vs. CIT (supra). The ld.CIT(A) also took cognizance of the assessment passed in the Asstt.year 2010-11 in set aside proceedings and after perusing the impugned assessment order, the ld.CIT(A) has reproduced the

finding of the order on page no.12 of the impugned order. However, thereafter, the ld.CIT(A) observed that certain purchases were not found to be genuine and he confirmed the disallowance at 17% of the alleged bogus purchases. This exercise worked out to disallowance of Rs.59,16,000/- out of the total disallowance made by the AO. In this way, the ld.CIT(A) has partly deleted disallowance and partly confirmed.

10. Before us, the ld.DR relied upon the finding of AO. He contended that the liability was contingent in nature. The assessee failed to prove genuineness of the expenditure incurred for replacement of batteries, and therefore the AO has rightly disallowed.

11. On the other hand, the ld.counsel for the assessee relied upon the order of the ld.CIT(A) as well as stand of the AO in the Asstt.Year 2010-11. He took us through assessment order passed on 30.3.2016 in the Asstt.Year 2010-11 which is available on page no.83 to 89 of the paper book.

12. We have duly considered rival submissions and gone through the record carefully. The assessee has turnover of more than Rs.102 crores. It has made provision for replacement of batteries *qua* the computers sold by it. The clause of the agreement on which it was required to replace has been taken note by the ld.CIT(A), and such clauses read as under:

Battery replacement	*The battery should be replaced as per requirement. However, at the end of the 5th year of warranty, replacement of battery with a new one is compulsory.*

The another purchase order received by appellant from CORE Projects & Technologies Ltd. for A.Y.2012-13 has been perused and the warranty clause in second page of the order is reproduced as under:-

Warranty	*5 Years onsite warranty on the UPS and Batteries from the date of installation and*

	commissioning. Battery make as specified by GIL should be, Quanta/CSB/Global Yuasa. Battery should be replaced as per requirement during the contract period & definitely again at the time of handing over the project (End of the Contract period). Replacement of all batteries at end of the project is mandatory. Vendor has to maintain record serial Nos. of replacement battery/UPS/Stabilizer

13. Before adverting to the proposition laid down by the Hon'ble Supreme Court in the case of Rotork Control India P.Ltd. Vs. CIT (supra), we would make reference to the stand of AO in the case of the assessee in the Asstt.Year 2010-11. In this assessment year, the assessee made provision for battery replacement. The addition of Rs.1,43,99,000/- was made. The assessee took this issue to the ld.CIT(A) who confirmed addition to the extent of Rs.1,03,61,067/-. Dissatisfied with order of the ld.CIT(A), the assessee carried the matter in appeal before the Tribunal in ITA No.2484/Ahd/2013 and 2714/Ahd/2013. In other words, cross appeals were filed before the Tribunal. These appeals have been decided vide order dated 28.2.2014. The Tribunal has remitted the issue back to the file of the AO for fresh examination. The AO re-verified all these aspects, and found, as a matter of fact, that the provision made by the assessee in F.Y.2009-10 i.e. the Asstt.Year 2010-11 was utilized by Asstt.Year 2014-15 i.e. in the F.Y.2013-14. The total amount was used by the assessee except a sum of Rs.2,24,717/-. In other words, a provision of Rs.1,43,99,000/- was made. Out of which only Rs.2,24,717/- remained unutilized. This amount was written back in the accounts and offered as income. This verification was made subsequent to the assessment order passed in the Asstt.Yeaer 2012-13, that is impugned before us. Meaning thereby, the AO himself as accepted that provision made by the assessee is a contractual liability and has duly been discharged in the earlier years. This finding has been reproduced by the ld.CIT(A) in the impugned order at page no.12 which reads as under:

"……. It is worthwhile to mention the findings of AO in order for A.Y. 2010-11 u/s.143(3) r.w.s.254 dated 30.03,2016, which are as under:-

[6.3 Notice u/s. 133(6) were issued to some of the parties for verification of battery replacement claim made by assesses. The parties have responded positively & confirmed having raised complaints for failure of battery & due replacement by assessee firm.

6.4 On verification, submissions made by assessee including the contractual agreement furnished for supply of UPS system to M/s. NIIT & Staples, it is evident that assessee is bound to replace batteries, during 5 years, in case of any failure of batteries and compulsorily at the end of 5'n year, i.e. for the sale made in F.Y.2009-10, batteries to be replaced in F.Y.2013-14, and provision made by it is included in the sales shown as revenue income and hence not in the nature of contingent liability. Accordingly, based on the facts of the case stated above & after carefully examining additional evidence furnished before Hon'ble ITAT & this office, Rs.1,41,73,283/- is allowed as genuine provision for expenses, included in sale. Balance of Rs.2,25,717/- has taken as income by the assessee in A.Y. 2014-15. This bifurcation of two amounts, i.e. actual spent out of total provision & surplus, viz.1,41,73,283 & 2,24,717, aggregating to Rs.1,43,99,000/- is mentioned, statistically. Out of this, assessee has already got relief of Rs.40,37,933/- from Ld. CIT(A) and accordingly the remaining disallowance of Rs.1,03,67,0677- is taken as allowed by this order."

14. Hon'ble Supreme Court has explained the position of law on admissibility of a provision regarding warranty and relevant discussion is worth to note, which reads as under:

[U]A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation, and 9c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized. The word 'liability' is defined as "a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits. A past event that leads to a present obligation is called as an obligating event. The obligating event is an event that creates an obligation which results in an outflow of resources. It is only those obligations arising from past events existing independently of the future conduct of the business of the enterprise that is recognized as provision. For a liability to qualify for recognition there must be not only present obligation but also the probability of an outflow of resources to settle that obligation. Where there are a number of obligations (e.g. product warranties or

similar contracts) the probability that an outflow will be required in settlement, is determined by considering the said obligations as a whole. In this connection, it may be noted that in the case of a manufacture and sale of one single item the provision for warranty could constitute a contingent liability not entitled to deduction under Section 37 of the said Act. However, when there is manufacture and of an army of items running into thousands of units of sophisticated , the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative to setting that obligation."

15. In the light of the above, if we examine facts of the present case, then it would reveal that under contractual agreement, the assessee has been making provision consistently. It has demonstrated as to how the provision has been utilized by it *qua* which parties, on whose premises it has installed the computers. Therefore, we do not find any error in the finding of ld.CIT(a) that the assessee is entitled to claim deduction of provision for warranty for replacement of batteries *in toto*. However, the ld.CIT(A) has restricted the allowance of provision on the second reasoning assigned by the AO. The AO found that the assessee failed to prove its purchases; because out of total purchases, suppliers to the extent of Rs.1,56,78,802/- could not confirm the sales made to the assessee. The ld.CIT(A) was satisfied to the extent that batteries have been replaced, and the assessee must have earned extra profit by procuring batteries from sources "A", and probably bill from sources "B". There is no dispute with regard to the quantitative details of batteries. Dispute relates to source of procurements. The assessee placed on record documentation with regard to five parties who denied the sales to the assessee. According to the ld.CIT(A) profit element to the extent of 17% must have been earned by the assessee in this *modus operandi*. For harboring this plea, the ld.CIT(A) has made reference to order of the ITAT in the case of Vijay Proteins Ltd., 58 ITD 428 (ITAT-Ahd) wherein profit estimated at 25% of the purchase made where details were found to be bogus. On the other hand, stand of the assessee is that its turnover is of Rs.102 crores. The alleged extra

profit be estimated at the same rate on the alleged bogus puchses, as is shown by the assessee in the regular books. In the assessment order, the AO has recorded that the assessee has shown GP at 14.35% of the turnover, and net profit at 2.38% i.e. Rs.3,73,155/-. The case of the assessee is that this net profit rate of 2.38% should be applied for making disallowance against those alleged bogus purchases. In other words, case of the assessee is that a disallowance be worked out at Rs.3,73,155/- i.e. 2.38% of alleged bogus purchase of Rs.1,56,78,802/- .

16. We have looked into all these details. Before the ld.CIT(A), assessee has produced decision of Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat Ambuja Exports Ltd., Tax Appeal No.840 of 2013, and also relied upon in the case of Mayank Diamonds P.Ltd., Tax Appeal No.200 of 2003. It further relied upon decision of ITAT, Ahmedabad Bench in the case of ACIT Vs. Lulubi Steel in ITA No.1568/Ahd/2008. In the case of Gujarat Ambuja (supra), the AO disallowed 25% of the bogus purchase, which has been reduced to 5% at the level of ITAT. This decision of the ITAT was challenged before the Hon'ble Gujarat High Court, the Hon'ble Court did not interfere in the finding of the Tribunal. Similarly, in the case of Mayank Diamonds P.Ltd. (supra), GP rate of 5% was taken by the Tribunal, which has been upheld by the Hon'ble High Court. In the case of Lulubi Steel (supra), the Tribunal has again restricted the addition at 12.5%. In all these cases, Vijay Proteins (supra) has been considered. A perusal of the decisions would reveal that major factor which weighed with the ITAT as well as Hon'ble High Court was estimation of profit in a particular transaction after considering particular line of business. Here, in this case, the assessee has purchased batteries and replaced. Quantity was not in dispute. In the past, whatever provisions remained unutilized was offered as income by the assessee. Therefore, we are of the view that there is nothing with the ld.CIT(A) to estimate the profit

at 17% of the alleged bogus purchase. The ld.CIT(A) has made reference to the GP percentage shown by the assessee in the different assessment years. But while working out 17%, he has nowhere referred wither it is net profit of Rs.3.48 crores or GP out of this. GP has been shown by the assessee at 14.35% in this assessment year. But net profit is only 2.38%. The assessee has not disputed if 2.38% is being estimated as undue profit earned by it from purchase of these batteries amounting to Rs.1.56 crores. Calculation by the ld.CIT(A) are not based on any scientific formula or any evidence. There is no reference that in purchase and sale of computer batteries there could be profit margin is of 17%. It is also pertinent to note that whenever any estimation is required to be made guess-work would always be there. But such guess-work should be in consonance with overall profit shown by the assessee. It has achieved a turnover of more than Rs.102 crores, and returned income of Rs.4.13 crores. These factors are also to be kept in mind. Taking into consideration all these facts, we estimate disallowance out of these bogus purchase at 7%. In other words, 7% of the alleged bogus purchase of Rs.1,56,78,802/- will be disallowed. This ground taken by the Revenue is rejected; whereas the ground of appeal taken by the assessee is partly allowed.

17. Ground No.2 in the Revenue's appeal for the Asstt.Year 2012-13, and ground no.2 in the assessee's appeal for the Asstt.Year 2012-13, and ground no.3 in the appeal of the assessee for the Asstt.Year 2014-15. All these grounds are inter-connected with each other. The dispue in these grounds of appeals relate to determination of the amounts require to be disallowed out of sale promotion expenses.

18. We take facts first from the Asstt.Year 2012-13. In this assessment year, the assessee has debited a sum of Rs.1,29,93,438/- towards sales promotion expenses, and claimed the same in the profit & loss account. The ld.AO found that it has given costly gifts to certain

parties. He worked out such amount at Rs.1,17,40,918/-. The AO disallowed this amount out of total claim made by the assessee. The reasons assigned by him is that the assessee failed to give list of persons to whom such valuable gifts have been made for business promotion. On appeal, the ld.CIT(A) has restricted this disallowance to Rs.9.50 lakhs.

19. In the Asstt.Year 2014-15, the assessee has debited a sum of Rs.1,15,86,601/- as sales promotion expenses. The ld.AO found that Rs.30,52,101/- were debited by the assessee against trading business and Rs.85,34,500/- against commission income. The AO has disallowed a sum of Rs.85,34,500/- and this disallowance has been confirmed by the ld.CIT(A).

20. With the assistance of the ld.representatives, we have gone through the record carefully. The ld.CIT(A) while partly confirming the disallowance made by the AO has recorded the following finding (Asstt.Year 2012-13):

> *"1 Decision : I had given thoughtful consideration to the appellant's submission reproduced hereinabove. I had also carefully perused the relevant paragraphs of the Assessment Order under appeal. I find that there is considerable force of merit in the , Appellant's submission on this point which merits acceptance as much as the similar expenditure has been incurred and allowed in A.Y.2010-11 & 2011-12. In other words, it is not the new issue, the principle of consistency desired to be followed as has been held in various below mentioned case laws:*
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> *(i) DCIT Vs. Sulabh International Social Service Organisation [350ITR 189 (Patna)]*
> *(ii) CIT Vs. Ranganathar& Co. [316 ITR 252 (Mad)}*
> *(in) Gopal Purohit Vs. Jt. CIT [334 ITR 308 (SC]*
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> *The appellant has furnished before the AO complete details in respect of the expenditure in question and has also furnished copies of the bills/vouchers. Therefore, it emerges from the records of proceedings that the expenditure in question had been incurred in the normal course of the business of the appellant and the same had been incurred for the purpose of business of the appellant. The expenditure has not been proved to be bogus through some independent inquiry. However, at the same time, it is not open and shut case for appellant because the*

perusal of the Assessment Order indicates that the appellant had not furnished the names of the persons to whom the gift/presentation articles had been given. In the course of the appellant proceedings, the AR of the appellant submitted that disclosure of name of the parties would adversely affect the business of the appellant and in order to keep the business secret, the appellant was compelled to withhold the names. The AR further pleaded that nondisclosure of the name would not operate to disentitle the appellant's legitimate claim of expenditure which has been genuinely incurred on account of sales promotion which is directly related to the business of the appellant. On the other hand, it would also not entitle the appellant to get relief in total.

5.1.1 Taking into consideration the totality of the facts and circumstances of the case including the dynamics of business involved as contained in submission of the appellant, I am inclined to hold that the AO is not justified in making the impugned addition toto and is against the principle of natural justice. The truth lies somewhere down the line wherein sense of proportion and principle of natural justice would be met. In the facts and circumstances of the case, it is decided that a lump sum addition of Rs.9,50,000/- would serve the ends of justice. Accordingly, addition to the extent of Rs.9,50,000/- is confirmed and the balance amounting to Rs.1,07,90,918/- is hereby directed to be deleted. The appellant gets relief of Rs.1,07,90,918/-. The ground No.3 is allowed."

21. Stand of the assessee is that it was in the business of trading in computer spares and peripheral. It was also providing maintenance services. There are many suppliers in the area of business, in which the assessee was engaged. In order to remain in the market, and also to maintain assessee's hold in the market, it is essential to incur expenditure on sale promotion. The assessee further contended that it has achieved a turnover of Rs.102.32 crores, and against which it has incurred expenditure of Rs.1,29,93,438/-, which is just 1.14% of the total turnover. The expenditure cannot be said to be excessive or unreasonable. Only reason assigned by the AO is that it failed to give list of recipients of the gifts.

22. After going through well reasoned finding of the ld.CIT(A), we are of the view that there is no justification to interfere in it. The ld.CIT(A) found as a matter of fact that similar expenditure incurred by the assessee in the Asstt.Year 2010-11 and 2011-12, and those

expenditure were allowed to it. The ld.CIT(A) followed decision of the Hon'ble Patna High Court and Hon'ble Madras High Court as well as of Hon'ble Supreme Court to follow the proposition of consistency in the finding extracted (supra). The ld.CIT(A) has partially confirmed disallowance of Rs.9.50 lakhs; but there is no justification for such disallowance also. The assessee is a well organized business house, who has achieved turnover of more than Rs.102 crores; meaning thereby, its affairs must have been managed in professional manner, where complete details might have been maintained. The assessee has given no details to whom such gift items were given. It is case of the assessee that in order to maintain secrecy of its line of business, it is not incumbent upon him to disclose personal details of recipients. It has shown bills and vouchers for the purchases. All the details have been maintained scientifically. An estimation of disallowance could only be made, if there are some lapses in the detailed maintained by the assessee. The reasoning given by the AO is altogether different which did not meet approval of the CIT(A). Thereafter, the ld.CIT(A) ought to have not made adhoc disallowance. The ld.CIT(A) was not justified in partially confirming the disallowance. After perusal of the finding of the ld.CIT(A), we do not find any error in it to the extent the ld.CIT(A) has deleted the disallowance. There is no justification to interfere in his order.

23. However, we are of the view that there is no reason to disallow expenditure to the extent of Rs.9.50 lakhs on an adhoc basis. We delete this disallowance also. Thus, we allow the grounds of appeal raised by the assessee, and reject ground of appeal raised by the Revenue.

24. As far as Asstt.Year 2014-15 is concerned, in this year, the assessee has declared total income at Rs.6,15,58,474/-. The reasons for making disallowance of Rs.85,34,500/- out of sales promotion

expenses is concerned, the AO was of the view that the assessee could not produce proprietor of M/s.Parkash Gold from whom the alleged gold was purchased, which was converted into 5-10 grams of gold coins. The assessee pleaded before the ld.CIT(A) that factum of existence of Parkash Gold has been accepted by the ld.CIT(A) in the Asstt.Year 2013-14. It was not in doubt. The assessee also contended that this sale promotion expenditure was incurred consistently in the earlier year, and these have been allowed to the assessee. The ld.CIT(A) concurred with the AO that the assessee failed to prove purchase of the gold out of which gold coins were got manufactured. The evidence exhibiting the fact of purchase of gold is for the accounting period relevant to the Asstt.Year 2014-15 i.e. before 31.3.2014. The AO has started inquiry in June, 2016. He has deputed Inspector to locate the shop somewhere in June, 2016. Emphasis of the AO is to the effect that whereabouts of Parkash Gold is not known, and the assessee failed to produce Shri P.V. Soni, proprietor of that concern. In this way, the ld.AO treated claim of the assessee as bogus.

25. On the other hand, the stand of the assessee is that it has purchased the gold. Thereafter, it was converted into 5-10 grams of coins which were distributed on festivities viz. Diwali and other occasions to its customers. Considering nature of the assessee's business, and expenses incurred in earlier years, it, but natural that this must have been recurring expenditure in this year also – there may be some irregularities crept in on the source of purchase of gifts items, but that is not sufficient to ignore claim of the assessee. The sales promotion expenses are one of necessary components for doing business smoothly and the returned income in this year has been enhanced. It has shown total income of Rs.6.15 crores against Rs.4.13 crores in the Asstt.Year 2012-13. In Asstt.Year 2012-13, we have accepted the sales promotion expenses to the extent of Rs.1.29 crores, wherein this year it has also incurred Rs.85 lakhs. Considering nature

of business, the consistency in incurring such expenditure which is essential components, we are of the view that there is no justification to disallow the sales promotion expenditure. We delete the disallowance. In the result, the ground of appeal taken by the assessee in the Asstt.Year 2014-15 is allowed.

26. Ground No.2: In ITA No.1778/Ahd/2016 as well as ground no.1 in ITA No.2324/Ahd/2018.

27. The grievance of the Revenue in its appeal for the Asstt.Year 2012-13 is that the ld.CIT(A) has erred in deleting disallowance of Rs.55 lakhs in respect of donation to political parties under section 80GGC of the Act. The grievance of the assessee in its appeal for the Asstt.Year 2014-15 is that the ld.CIT(A) has erred in confirming the disallowance of Rs.5,86,32,892/- which was claimed as deduction under Chapter VIA in respect of donation given to political party and charitable institutions.

28. Brief facts of the case are that in the Asstt.Year 2012-13, the assessee has given donation of Rs.55 lakhs to Rashtriya Komi Ekta Party ("RKE" party for short) which is duly registered with Election Commission of India. Similarly, for the Asstt.Year 2014-15, the assessee has given donation to the following parties.

Sr. No.	*Name of the Donee*	*Amount in Rs.*
1	*Rashtriya Komi Ekta Party*	*3,00,00,000*
2	*Akhil Bhartiya Hindu Mahasabha*	*1,00,00,000*
3	*Lok Janshakti Party*	*1,54,00,000*
4	*Shri Sadvichar Panvar Jankalyan Pashuraksha Charitable Trust*	*75,00,000*
5	*Mahavir Shubh Sandesh Jivdaya Panjrapoie charitable trust*	*25,00,000*
6	*Shri Vardhaman Jjivdaya Panjrapoie Charitable Trust*	*25,00,000*
	Total	*6, 79,00, 000*

29. In the Asstt.Year 2012-13, the AO has disallowed this donation of Rs.55 lakhs. However, in the Asstt.Year 2014-15, he disallowed a sum of Rs.5,46,32,892/- out of total donation made by the assessee. The finding of the ld.CIT(A) while deleting disallowance of Rs.55.00 lakhs in the Asstt.Year 2012-13 reads as under:

> *"7.1 Decision: I have carefully gone through the appellant's contentions reoroduced herein above. I have also perused the relevant paragraph of the Assessment Order under appeal. Upon perusal of records of proceedings, I find it as a fact that the appellant has given contribution of Rs. 55,00,000/- to Rashtriya Komi Ekta Party, which is a political party duly registered with the Election Commission of India. The necessary documentary evidences in the form of copy of the receipt of the donation given and also evidence regarding registration of the said political party with the Election Commission of India had been furnished by the appellant before the AO in the course of Assessment proceedings and also before me in the Appellate proceedings. /The AO's reference in the assessment order to the effect that the said political party has not filed Return of Income for A.Y. 2012-13 will not disentitle the appellant's claim for 'deduction on account of contribution to the political party, when all the conditions prescribed in section 80GGC are duly satisfied. The donation has been made through cheque to a political party approved by Election Commission of India, therefore, the conditions to claim deduction u/s.80GGC are fully complied. Having regard to the totality of the facts and circumstances of the case, I hold that the AO is in error in disallowing claim for deduction on account of contribution to political party which is as per the provisions of section 80GGC. Accordingly, the disallowance made by the AO is hereby deleted and the AO is directed to allow the same. This ground no.5 is allowed."*

30. With assistance of the ld.representatives, we have gone through the record. In the Asstt.Year 2012-13, the assessee has given donation to only one party i.e. "RKE" whereas in the Asstt.Year 2014-15, it has given donation to three political parties viz. "RKE", Akhil Bhartiya Hindu Mahasabha, Lok Janshakti Parity. Apart from these three political parties, it has further given donation to three charitable institutions vis. Shri Sadvichar Parivar Jankalyan Pashuraksha Charitable Trust, Mahavir Shubha Sandesh Jivdaya Panjrapole Charitable Trust, Shri Vardhaman Jjivdaya Panjrapole Charitable Trust. Let us take note of section 80GGC:

> *80GGC. In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party or an electoral trust :*
>
> *Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.*
>
> *Explanation.—For the purposes of sections 80GGB and 80GGC, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).*

31. A perusal of the above section would reveal that it provides deduction of any amount of contribution made by an assessee in the previous year to a political party. Only exception provided in this section is that the assessee should not be by a local authority i.e. Municipal authority etc. or any artificial juridical person wholly or partly funded by the Government. In other words, donation should not be given by a local authority or by a corporation funded by the Government. Except these two categories of the assessee, if any other assessees made a contribution to a political party, then such contribution would be allowed as deduction. *Explanation* appended to this section further provides the meaning of a political party and it contemplates a "political party" means a political party registered under section 29A of the Representation of the People Act, 1951. The assessee has produced details of payment made through account payee cheques as well as registration certificate of these political parties before the AO. Only exclusion made with effect from 1.4.2014 is that donation should not be made in cash and this clause is not applicable on the facts of the assessee's case, because it has made through account payee cheques. Next category of donee is charitable institution. These institutions got registered under section 12A of the Income Tax Act. Their incomes are to be assessed under sections 11, 12 and 13 of the Act. Their characters/activities have been categorized as charitable by the department itself. They have been granted registration under section 80GGC of the Act for soliciting donation from the assessee,

which will be allowed as deduction in the hands of donors. The ld.CIT(A) in the Asstt.Year 2012-13 has accepted this fact, and deleted the disallowance.

32. The case of the Revenue in the Asstt.Year 2014-15 is that the assessee failed to prove, whether ultimately, the donees have used these monies ? The AO has devoted a lot of energy in conducting such inquiry as to how these monies have been incurred by the recipients. To our mind, the authorities below have misdirected themselves. The donees are taxable entities in themselves. If they misused their position and failed to conduct themselves in regard with requirement of law, then this amount could be taxable in his hands. Act nowhere put obligation upon the donor to ensure how the funds are utilized by the donee towards their objects. Due to this reason, we are of the view that whole angle of inquiry at the end of the AO is misdirected. It is for the AO to verify whether these charitable institutions have utilized funds for charitable objects or not, in their own cases, and if they failed to utilize funds for their objects, then their charitable status could be cancelled. Registration under section 12AA could be cancelled as per the procedure contemplated in section 12AA(3) of the Act. The funds which were not used for objects of the Trust, that can be brought to tax under section 13(3) of the Act. A perusal of the scheme of Income Tax Act, it would reveal that once the donation has been made, the donee is not under obligation to keep a track of the donation, and nothing left in his hand which can ask for return of these amounts. There is no such provision provided in the Act. If a duly recognized institution, for the purpose of receiving donation, somebody makes donation and then how the donation would be bogus, if the donee failed to use it for the object which has been made eligible to receive the donation. How the donor could dictate terms after donations are made ? No donee will be under influence of the donor for arranging its affairs. Therefore, there is

fallacy in the approach of the ld.AO as well as the ld.CIT(A) for disallowing the donations made by the assessee. We do not find merit in the grounds of Revenue raised in the Asstt.Year 2012-13. The ld.CIT(A) has rightly deleted the disallowance of Rs.55.00 lakhs. This ground of appeal is rejected. On the same analogy, the grounds appeal raised by the assessee in the Asstt.Year 2014-15 for disallowance of Rs.5,86,32,892/- is allowed.

33. In the result, ITA No.1778/Ahd/2016 (by Revenue) is dismissed, and ITA No.1900/Ahd/2016 (by assessee) is partly allowed.

34. Now we take remaining grounds of appeal in the Asstt.Year 2014-15.

35. Ground no.1 and 3, we have already adjudicated along with appeal for the Asstt.Year 2012-13. In Ground No.2, the grievance of the assessee is that the ld.CIT(A) has erred in confirming the disallowance of Rs.17,74,045/- which was disallowed by the AO out of travelling expenditure.

36. Brief facts of the case are that the assessee has debited total expenses of Rs.73,38,974/- towards travelling expenses. The ld.AO has gone through the record and also recorded statement of partner Shri Kirit Patel. He found that out of total expenses a sum of Rs.14,29,324/- were incurred for personal trip of Shri Kirit Patel to South Africa. He also discussed that expenditure incurred for the visit of Smt.Ami Patel, partner to Ooty was also of personal nature. In this way, he worked out a disallowance of Rs.17,74,045/-. Appeal to the CIT(A) did not bring any relief to the assessee.

37. With the assistance of the ld.representatives, we have gone through the record. We find that during the course of assessment

proceedings, the ld.AO has confronted the assessee with regard to the expenditure of Rs.14,29,324/-. *Qua* this expenditure, it was contended by the assessee that the expenses relatable to South Africa trip by the partner Shri Kiri Patel are only of Rs.12,99,100/- and not Rs.14,29,324/-. The remaining expenditure of Rs.1,30,224/- is relatable to the expenditure incurred on travelling within India for the purpose of business.

38. After considering complete details, as discussed in the assessment order, we delete a sum of Rs.1,30,224/- out of total disallowance made by the AO at Rs.17,74,045/- which has been confirmed by the ld.CIT(A) also. We find that the assessee failed to demonstrate that rest of the expenditure disallowed by the AO was also incurred for the purpose of business. No doubt the total expenditure claimed by the assessee is only 0.85% of the total revenue earned by it. It has demonstrated a turnover of Rs.91.40 crores, and it has claimed travelling expenses of only Rs.77.33 lakhs; but still if it is unearthed by the AO that in certain expenditure element of personal nature is involved, then such expenditure cannot be allowed to the assessee. Therefore, this ground of appeal is partly allowed.

39. Ground No.4: In this ground, grievance of the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.27,60,687/- which was added by the AO on account of understatement of closing stock.

40. During the assessment proceedings, in respect of value of closing stock, the assessee has filed complete details and inventory of the closing stock showing value of closing stock at Rs.6,72,93,163/- item-wise. The ld.AO noticed that in the chart, value of some of the items of closing stock was taken below the purchase rate or at opening balance, with specific reference to the computer table/chair. Taking clue from

the value of closing stock in respect of table/chair and server, the ld.AO assumed that the assessee has valued entire closing stock at a price lower than the cost or purchase price. Thus, as per the AO, assessee has made understatement of closing stock to the extent of Rs.12,03,408/- and made addition of Rs.27,60,687/- in the total income of the assessee. Action of the AO was challenged before the first appellate authority. Before the ld.CIT(A), the assessee has submitted that item-wise details of inventory was submitted before the AO during the assessment, and the AO arbitrarily adopted average value of the computer table/chair without considering the fact that there were different types of computer tables and chairs having different purchase price, and therefore, they could not be averaged. The assessee further submitted that the similar method of valuation followed by the assessee year and year and has been accepted by the department. It further submitted that adjustment on account of valuation of closing was tax neutral, and would not fasten any tax liability, because value of closing stock of the year would become opening stock in the next year, and therefore, there is no logic for the assessee to underestimate the value of closing stock. However, the ld.CIT(A) based on the specific observations of the AO dismissed submissions of the assessee in the absence of evidence, and accordingly confirmed the addition. Thus, the assessee is now before the Tribunal.

41. Before us the ld.counsel for the assessee reiterated submissions as were made before the Revenue authorities. He further submitted that the Revenue authorities while valuing the closing stock by taking a specific instance of stock item, generalized the entire value of closing stock. It is submitted that this method of valuing closing stock is followed by the assessee year after year, and the same was accepted by the department. The instance pointed out by the ld.AO in respect of stock of computer table/chair for calculation of understatement of closing stock is misleading, because, the said items have different sizes,

models and having different purchase price, and therefore, it cannot be simply averaged by total number of items in question. On the other hand, the ld.DR supported orders of the Revenue authorities.

42. We have heard both the parties, considered submissions made and also perused the orders of Revenue authorities. While going through the items of closing stock furnished before the Revenue authorities indicated that there were about 22 closing stock items in the list. The assessee has in fact valued the stock on the basis of estimated realizable value. No doubt estimation of net realizable value should be based on some evidence. It has claimed by the assessee that it is following consistently valuation of inventory at cost or net realizable value whichever is less. Out of total stock, the ld.AO has chosen computer table/chair and serve as indicative of how the assessee has undervalued the closing stock. On that basis he averaged entire stock and determined undervaluation of closing stock, which according to the assessee was faulty, because, these items were in different sizes and having different purchase price. This claim of the assessee cannot be simply bruised aside, because computer table are different in sizes and purchased at different prices, and therefore, it cannot be taken in one lot. Therefore, we are not convinced with the method adopted by the AO in determining the value of understated closing stock in respect of computer chair/tables, because firstly the same has to be segregated in respective size, types and price, and thereafter arrive at more reasonable value of closing stock at cost or net realizable value. The ld.AO failed to take note of this aspect. He did not refer to any evidence collected by him rejecting the valuation made by the assessee towards realization of value of the assets disclosed in the closing stock. In other words, if a particular computer table/chair has been valued in the closing stock on net realizable basis, then its value should be disturbed by the AO by pointing out specific defects in determination of such value, and how he will determine the value which could be realized

on sale of such table/chairs. This exercise will be meaningless because accounting year involved herein is 2013-14 and the assessment order was examined this aspect in the year 2016. By that time the available of tables/chairs might not be in the stock. This fact has to be appreciated with different angle also that it is a tax neutral. Whatever value AO would add and tax in this year, would become opening stock in the next year and would reduce taxable income in the coming year. The assessee has been consistently offering the income of more than Rs.4 to 5 crores, hence no effect will be there on this type of assessee by making addition in the value of closing stock. It is pertinent to observe that in this year also the assessee has returned income of more than Rs.6.15 crores. In the Asstt.Year 2012-13 its income was Rs.4.13 crores. In such type of situation, small variation on account of closing stock would hardly affect the taxability. Therefore, to our mind the AO should desist from making such addition without conducting a proper exercise. We allow this ground of appeal and delete disallowance.

43. In the result, ITA No.1778/Ahd/2016 (by Revenue) is dismissed, and ITA No.1900/Ahd/2016 and 2324/Ahd/2018 (by assessee) are partly allowed.

Order pronounced in the Court on 11th January, 2022 at Ahmedabad.

Sd/-	Sd/-
(WASEEM AHMED)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	VICE-PRESIDENT

Ahmedabad; Dated 11/01/2022

*आदेश की प्रतिलिपि अग्रेषित/*Copy of the Order forwarded to :