

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.2320 & 2364/Kol/2013
Assessment Year :2011-12

Inland World Logistics Pvt. Ltd., P-221/2 Strand Bank Road, Kolkata-001 [PAN No.AAACI 5607 C]	V/s.	ACIT, Central Circle-IV, Aykar Bhawan "Purva" 3 rd , Floor, 110, Shanti Pally, Kolkata-107
ACIT,CC-IV, Aayakar Bhavan, Poorva, 110 Shanti Pally,Kolkata-107	V/s.	M/s Inland World Logistic Pvt. Ltd.P-221/2, Strand Bank Road, Kolkata-001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri B.C. Jain, FCA
राजस्व की ओर से/By Respondent	Md. Ghayas Uddin, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	24-01-2017
घोषणा की तारीख/Date of Pronouncement	23-03-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

The assessee as well as Revenue are in cross-appeals directed against the common order of Commissioner of Income Tax (Appeals), Central I, Kolkata dated 15.07.2013. Assessment was framed by ACIT, CC-IV, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 19.04.2013 for assessment year 2011-12.

Shri B.C. Jain, Ld. Authorized Representative appeared on behalf of assessee and Md. Ghayas Uddin, Ld. Departmental Representative represented on behalf of Revenue.

2. Both the appeals are heard together and are being disposed of by way of consolidate order.

First we take up assessee's appeal in ITA No.2320/Kol/2013.

3. The facts in brief are that assessee, a Private Limited Company, engaged in transportation business has filed its return of income declaring total income of ₹9,79,92,809/-. Subsequently, the case was selected under scrutiny CASS module and accordingly issued notice u/s. 143(2) / 142(1) of the Act upon the assessee. The assessment was framed u/s. 143(3) at a total income of ₹12,33,53,380/- after making certain additions / disallowances which are discussed here in below:-

4. First issue raised by assessee in Ground No. 1 & 2 is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of ₹ 1,25,30,287/- towards repair expense on the rented premises. The assessee without prejudice to above also submitted to treat the said repair expense as capital in nature and prayed for the allowance of depreciation thereon.

The assessee has incurred an expense of ₹1,25,30,288/- on repair & maintenance for its go-down taken on lease. The details of such expenses are reproduced below:-

Sl. No.	Godown at	Amount w/off during the year INR	Name of landlord	Monthly rent INR
1	Ankurhati (Bombay Road) WB	255990	Chandu Somani	75000
2	Salap (Bombay Road) WB	3474066	Somani Services P. Ltd.	25000
3	M.D. Road, Kolkata	6496321	Inland Couriers P. Ltd	10000
	Total	12530287		

The assessee has claimed such expenditure in entirety in the form of depreciation in Tax Audit Report. However, the assessee claimed that the expenditure incurred representing the current repairs and therefore allowable u/s.30(a)(ii) and Sec. 37(1) of the Act. On question by the AO about the details of current repairs and source of fund for such huge expenditure the assessee

failed to furnish the supporting evidence. Therefore, the AO disallowed the claim of assessee and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who has confirmed the order of AO by observing as under:-

“4. In ground no 2, it has been contended that the AO was not justified in not allowing sum of Rs.1,25,30,287/- as expenditure on current repairs which was inadvertently reflected as investment in tenanted property in the statement of accounts. It was explained before the AO that the said sum was claimed as depreciation but the same should be allowed as expenditure. The issue is covered by my order dated the 18th July, 2012 in the case of the appellant for the assessment year 2010-11 in Appeal No. 241/CIT(A) C-I/CC—IV/Kol/11-12. It was held in para 13 of the said appellate order that similar sum was neither allowable as expenditure nor as depreciation. Following the decision, ground no. 2 is dismissed.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

6. The Ld. AR for the assessee before us submitted that the instant issue has already been covered in assessee's own case by the order of this Tribunal in **ITA No.1179/Kol/2012** for the AY 2004-05 vide order dated 29.4.2016 wherein it was directed to treat the current repair expenditure as capital in nature and accordingly allow the depreciation thereon.

On the other hand, Ld. DR submitted that the assessee failed to furnish the necessary details and vehemently relied on the order of Authorities Below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates to the disallowances made by the AO for the current repair expenses incurred by the assessee. The expenses were disallowed by the AO on the ground that the assessee failed to furnish the necessary details in support of aforesaid repair expenses. The action of the AO was subsequently confirmed by the Id CIT(A). The Id AR before us alternatively submitted that the said expenses can be treated as capital in nature and the depreciation thereon can be allowed. The Id AR in support of his contention has also submitted that the issue is already

covered by the order of Hon'ble ITAT in the assessee's own case (supra). However, on perusal of the aforesaid ITAT order we find that there was no dispute about the genuineness of the expenditure but in the instant case the assessee failed to establish the genuineness of the expenditure. Therefore, the order of the Hon'ble ITAT is distinguishable as the facts of both the cases are different. The question to treat the 'current repair' as capital expenditure arises only when the assessee establishes the genuineness of the expenses. As in the case before us the assessee failed to furnish the necessary details in support of its claim before the lower authorities, therefore the plea for depreciation cannot be entertained. However, now the Id AR has submitted the list of expenses of the 'current repair' expenses along with the bank statement for consideration. In the aforesaid facts and circumstances of the case, we are of the view that first the genuineness of the expenses should be established. For that purpose and in the interest of natural justice, we are inclined to restore the issue to the file of AO for fresh adjudication as per law. Once the genuineness of the expenses gets established, then the same can be treated as capital in nature and the depreciation thereon can be allowed. Thus the ground filed by the assessee is allowed for statistical purposes.

8. Next issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹ 1.50 lakh, ₹50,000/- and ₹ 1 lakh on account of telephone expense, business promotion expense and miscellaneous expenses respectively.

9. The assessee, in the year under consideration has claimed telephone expense, miscellaneous expense and business promotion expense. On question by the AO about the details of such expenses to establish whether these were incurred in connection with business. The assessee failed to give satisfactory reply to AO. Therefore, the AO disallowed the expenses on estimated basis.

10. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who after considering the submission of assessee confirmed the order of AO by observing as under:-

“... .. I do not find merit in the submissions made on behalf of the appellant when all relevant details were not produced at the assessment stage. The disallowances made by the AO are neither excessive nor unreasonable. The disallowances are confirmed.”

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

11. Before us Ld. AR submitted that all the necessary details were not furnished before Authorities Below due to massive fire broke out in the office of assessee. Ld. AR also submitted that in the earlier years, no disallowance in the above expenses was made by the Authorities Below. In support of assessee's claim Ld. AR submitted a chart of the expenses which reproduced below as under:-

A.Y	Turnover	Telephone exp.	Disallowance telephone	Business promotion	Disallowance business promotion	Misc. Exp.	Disallowance misc. exp.
09-10	35162.00	236.27	Nil	2.66	Nil	252.77	Nil
10-11	42284.22	190.67	Nil	13.57	Nil	183.53	Nil
11-12	49310.97	169.72	1.50	16.00	0.50	147.98	1.00

On the other hand, Ld. DR vehemently supported the order of Authorities Below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates to the disallowance made by the Authorities Below on account of non-production of supporting evidence. Therefore, disallowances were made on ad hoc basis. It is the duty of the assessee to submit the documents in support of the expenditure claimed in profit and loss account. In the absence of such documents, the authenticity of the expenses cannot be established. Therefore the disallowances are warranted. However, before making the disallowances it should be based on some reasonable basis. To form the reasonable basis, it is imperative to refer the historical data of the assessee and to refer the books of account. If the expenses claimed by assessee in the year under consideration are excessive in comparison to earlier years and also do not commensurate with the turnover of the assessee then disallowances can be

made in the absence of documentary evidence. In the absence of any documentary evidence and any plausible reasons for such excessive expenditure then the disallowance made by the Authorities Below stand on scientific basis. However, in the present case, we find that there was no excess claim of expenditure made by the assessee in comparison to earlier years vis-à-vis to the turnover of assessee. It is also important to note that there was a massive fire broke out in assessee's office premises as claimed by assessee and that may be one of the reasons for non-production of the supporting evidence before the authorities below. However none of the Authorities Below have not commented to this aspect. Since there is no finding of the Authorities Below on this aspect whether the assessee failed to give satisfactory reply due to fire break out in the office of assessee and if that is not the case then it was the duty of assessee to justify all the expenses claimed in its profit and loss account. However, we are not interested in sending back the matter to the AO to avoid further litigation. Therefore, in the interest of justice, we restrict the disallowances to the extent of 50% for the year under consideration, as all the vouchers were not produced for verification during the appellate proceedings. AO is directed accordingly. Thus, this ground of assessee's appeal is allowed.

13. In the result, assessee's appeal is partly allowed for statistical purpose.

Coming to Revenue's appeal in ITA No.2364/Kol/2013.

14. Revenue has raised following ground of appeal:-

"1. On the facts and in circumstances of the case, Ld. CIT(A) erred in deleting an addition of R.1,25,30,287/- ignoring the facts that the assessee had shown its inability to produce the supporting bills/vouchers to substantiate its claim."

15. The solitary issue raised by the Revenue is that Id. CIT-A erred in deleting the addition made by the AO for Rs. 1,25,30,287/- on account of investment in tenanted property out of undisclosed income. The assessee in the year under consideration has made the investment in the tenanted properties for Rs.1,25,30,287/-. On question by the AO about the source of investment the assessee submitted that the amount has been spent from the

regular source of the business which is duly recorded in the books of accounts. However, the AO observed that the necessary supporting documents were not available with the assessee. Therefore the AO treated the same as undisclosed income and added to the total income of the assessee.

16. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted the expenditure on repair & maintenance was representing the current repairs and it was duly accounted for in the books of account and tax audit report. The AO has found no defect in the books of account while framing assessment proceedings and Ld. CIT(A) after considering the submission of assessee has deleted the addition made by the AO by observing as under:-

“... .. I have perused the assessment order and copy of the tax audit report produced in course of the appellant proceedings. I find that sum of Rs.125.30 lakhs is reflected in schedule “D” Fixed Assets to the tax audit report under the head “Development of Tenanted Property”. This fact has also been acknowledged by the AO in his assessment order whether the sum of Rs.1,25,30,287/- was related to current repairs or investment in tenanted property, the fact remains that the same is duly reflected in the statement of account of the assessee company; and consequently, the same cannot be regarded as undisclosed. In this factual background, it is to e held that the AO was not justified in treating the said sum as undisclosed income of the assessee. the addition of Rs.1,25,30,287/- on account of investment in tenanted property is directed to be deleted. Ground no 1 is allowed.”

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

17. Ld. AR for the assessee before us reiterated the arguments that were made before the Id. CIT(A). On the other hand, Ld. DR vehemently relied on the order of AO.

18. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case have already been elaborated in the foregoing paragraphs and there is no dispute about the facts of the case. Therefore the facts of the case are not repeated for the sake of brevity. At the outset it was observed that the assessee has admitted before

the AO that the necessary details with regard to the investment in the tenanted properties are not readily available. However, the assessee before the Id. CIT(A) submitted that impugned investments have been disclosed in the books of accounts and no defect was pointed out by the AO. Therefore, the Id. CIT(A) allowed relief to the assessee. It is also important to note that the books of accounts were duly produced before the AO at the time of assessment. After considering the facts in totality, we are of the view that the AO failed to bring any defect in the books of accounts and all the investments have been duly disclosed in such books. Thus, we find no infirmity in the order of Id CIT(A) and uphold the same. Hence, this ground of Revenue's appeal is dismissed.

19. In the result, assessee's appeal is partly allowed for statistical purpose and that of Revenue is dismissed.

Order pronounced in the open court 23/03/2017

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

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 23/03/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Inland World Logistics Pvt. Ltd., P-221/2, Strand Bank Road, Kol-01
2. राजस्व/Revenue-ACIT,C. C, Aykar Bhawan, "Purva" 3rd Fl, 110 Shanti Pally,Kol-107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।