

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI N.V.VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.406/Kol/2013

(निर्धारण वर्ष / Assessment Year : 2008-09)

JCIT, Range-3, Asansol Parmar Building, 54, G.T.Road (West), Asansol- 713304	Vs.	M/s Pawan Hardcoke Industries, Bhukania House, Pera Galli, Kachari Road, Barakar, Burdwan
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADFP 4056 E		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Shri Rajat Kumar Kureel, JCIT-DR
निर्धारिती की ओर से /Assessee by : Shri T.P.Roy, Advocate

सुनवाई की तारीख / **Date of Hearing** : 03/04/2017

घोषणा की तारीख/**Date of Pronouncement** 19/04/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals), Durgapur in appeal No.108/CIT(A)/Asl/Cir-2/Asl/2010-11, which in turn arises out of an order passed by the Assessing Officer u/s.144 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 25.10.2010.

2. Brief facts of the case qua the assessee are that the assessee is a partnership firm engaged in the business of manufacturing of coke both hardcoke and soft coke. The assessee is doing business in the name of M/s Pawan Hardcoke Industries, which is a partnership firm consisting of two partners. The Return of income of the assessee was processed u/s.143(1) of the Act. Later on, Assessee's case was selected for scrutiny u/s.143(3) of the Act and the AO completed the assessment by making

addition on account of unexplained cash credit u/s.68 of the Act. The Assessing Officer also disallowed the transportation charges at Rs.12,85,223/- and disallowed some expenditure under different heads. The assessee had shown creditors to the tune of Rs.37,30,760/- in balance sheet as on 31.03.2008. Out of that creditors, M/s Nirmal Fibers Pvt. Ltd. had shown the credit of Rs.36,94,402/-. As per AO it was a fresh credit balance appearing in the year under consideration. Therefore, the AO issued notice u/s.133(6) to M/s Nirmal Fibers Pvt. Ltd. to furnish the PAN No. details of transaction, agreement in respect of transaction, confirmation and creditworthiness of the transactions. On receipt of the notice, M/s Nirmal Fibers Pvt. Ltd., as required by the AO, provided a few information, stating the details of Rs.36,94,400/-. The AO observed that M/s Nirmal Fibers Pvt. Ltd. did not provide the details and creditworthiness of the transaction, therefore, the AO stated that the assessee has failed to prove the veracity of the transactions and creditworthiness of the transaction. Therefore, the AO held that the assessee has failed to furnish the identity of the creditors, capacity of the creditors and genuineness of the transactions. Therefore, the AO treated the said transaction as an unexplained cash credit and added in the income of the assessee at Rs.36,94,402/-. The AO also made the addition on account of increase in transportation charges at Rs.12,85,223/- observing that the assessee did not produce the identity (registration document) of the owner of the vehicles. In addition to this, Id. AO also made disallowance under different heads.

3. Aggrieved from the order of Assessing Officer, the assessee filed an appeal before the CIT(A), who has deleted the addition made by the Assessing Officer. The Id CIT (A) observed, in respect of the ground No.1 raised by the Revenue, which relates to Rs. 36,94,402/-, which was added by the Assessing Officer as unexplained cash credit U/s 68 of the I.T.Act, that the said amount was confirmed by the Trade Creditor. It appeared to CIT(A) that the assessment details of the said concern had been provided to the A.O. If the A.O. had any doubt regarding the creditworthiness of the said concern he could have made independent enquiries. However, certain requisitions made by the A.O. to the said concern were not complied with. But the assessee can not be liable for that because the amount has been borne out by the confirmation given by the trade creditor. Under the circumstances, if the A.O. had any doubts regarding the creditworthiness of such a party he was at liberty to conduct his own enquiries. However no such enquiries were conducted by AO. Moreover, purchases have certain physical activities related to them. The Id CIT(A) held that the assessee had discharged its liability and if at all any adverse view has to be taken then it must be done so on the basis of further material gathered by the A.O. but no such material was on record of the AO. This way, the Id CIT(A) deleted the addition made by the A.O. u/s.68 of the Act to the tune of Rs.36,94,402.

The Id CIT(A) also provided the relief of Rs. 2,86,252/- which was disallowed by the Assessing Officer out of expenditure under different heads, such as, telephone, vehicle upkeep and rebate etc. The Assessing Officer made these additions based on estimate without any logic therefore, Id CIT(A) deleted them.

The Id CIT (A) also deleted the addition of Rs.12,85,223/- which was disallowed by the Assessing Officer on account of increase in transporting charges. The Id CIT (A) observed that reasoning given by the A.O. to be extremely cryptic and the basic facts narrated by the assessee were not disputed by the A.O. It appeared to the Id CIT(A) that TDS had indeed been deducted on part of the transportation charges paid. It was also seen from the order of AO that part of the payment has been made by cash through vouchers and also that these payments have been in sums lower than Rs.20,000/-. The CIT(A) noticed that why an estimated disallowance has been made without invoking section 40(a)(ia). As per the assessment order, the A.O. knew the exact amount of transportation single occasion, are below Rs.20,000/-. The CIT(A) also observed that why without enquiry an estimated disallowance of this nature has been resorted to. In this case, it is seen that considerable facts were in the possession of the A.O. However, no enquiry on these facts is visible on record. The A.O's logic behind this disallowance is not comprehensible. Transportation charges are related not only to the amount of purchase but also to the distance travelled. This way, the Id CIT (A) deleted Rs.12,85,223/-

4. Not being satisfied with the order of the CIT(A), the assessee is in appeal before us and has taken the following grounds of appeal :-

1. *That, the Ld. CIT(A), Asansol has erred in law and on facts by allowing the relief of Rs. 36,94,402/- which was added by the Assessing Officer as unexplained cash credit u/s 68 of the I.T.Act.1961.*
2. *That, the Ld. CIT(A) Asansol has erred in law and on facts by allowing the relief of Rs. 2,86,252/- disallowed by the Assessing Officer out of expenditure under different heads.*
3. *That, the Ld. CIT(A) Asansol has erred in law and on facts by allowing the relief of Rs. 12,85,223/-, disallowed by the Assessing Officer on account of increase in transporting charges.*

5. **First ground raised by the Revenue relates to unexplained cash credit u/s.68 of the Act at Rs.36,94,402/-.**

5.1 Ld. AR for the assessee has submitted that the assessee firm being a manufacturer of hardcoke and soft-coke has to purchase coal from various parties. During the year under appeal, the appellant firm purchased coal from M/s Nirmal Fibers (P) Ltd. at Rs.36,94,402/-. The Assessing Officer has, in spite of submission of the confirmation of accounts and their details of transactions with the assessee firm, added back the entire outstanding amount to the total income of the assessee, alleging that the creditor lacked creditworthiness. The addition by the AO is totally arbitrary, illegal and without any basis, as M/s Nirmal Fibers (P) Ltd. is a reputed coal dealers of that area and have considerable volume of business and all particulars of having dealing with the assessee firm have been submitted to the AO. **The Id. AO did not at all consider the reply of M/s Nirmal Fibers (P) Ltd. as well as its statement of accounts and confirmation. Therefore, the addition is unjust and should be deleted.** Relevant papers and documents and also evidence of payments made to them in the next year are being furnished. **The Ld. AR for the assessee has submitted that assessee has paid the VAT on all the purchases made by him, therefore, there is no any question of bogus creditors.**

5.2 On the other hand, Id. DR for the Revenue has stated that assessee has failed to prove the identity of the creditors, capacity of the creditor and the genuineness of the creditor. Merely because there is a creditor in the balance sheet does not mean that it is a real liability. Therefore, the credit balance shown in the balance sheet in respect of M/s Nirmal Fibers Pvt. Ltd. of Rs.36,94,400/- is bogus.

5.3 Having heard the submissions, perused the material available on records, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id AR for the assessee are supported by the facts narrated by him above. As we noticed that Ld. AR for the assessee has stated that the assessee made confirmation of the trade creditor and the AO did not doubt regarding the creditworthiness of such party. If according to the AO it was a bogus liability then AO could do independent enquiries. The AO did not carry out any independent enquiry. Moreover, the AO has not disputed the purchases made by the assessee, therefore, the assessee has discharged his liability. The AO did not bring any cogent material on record that the credit balance shown by the assessee in its balance sheet, is bogus. Therefore, the order passed by the Id. CIT(A) does not contain any infirmity and, hence, we confirm the order passed by the Id. CIT(A).

5.4 In the result, appeal filed by the Revenue on ground No.1, is dismissed.

6. Ground No.2 raised by the Revenue relates to disallowance of Rs.2,86,252/- made by the AO out of expenditure under different heads.

6.1 Ld. AR for the assessee has submitted that the AO has disallowed certain expenses debited by the assessee in its profit and loss account on account of telephone expenses, vehicle expenses, repairs expenses and other miscellaneous expenses. The Ld. AR for the assessee has pointed out that the AO has made the addition on account of small-small

expenses on an estimated basis. We failed to understand the logic and the method adopted by the AO to make the estimated disallowance under various small expenses without bringing any cogent reason on record.

6.2 On the other hand, Id. DR for the Revenue has primarily reiterated the findings of the Id. CIT(A), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6.3 Having heard the submissions, perused the material available on records, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id AR for the assessee are supported by the facts narrated by him above. We noticed that the AO made addition on an estimated basis and there was no any logic for the estimated method adopted by the AO. Moreover addition made by the AO based on estimate without rejecting books of accounts are not tenable as the same has been held by the Hon'ble Supreme Court in Dhakeswari Cotton Mills, 26 ITR 775 (SC). Considering the factual position, we are of the view that the order passed by the Id. CIT(A) does not require any interference. Hence, we confirm the order passed by the Id. CIT(A).

6.4 In the result, appeal filed by the Revenue on ground No.2, is dismissed.

7. Ground No.3 relates to disallowance made by the AO at Rs.12,85,223/- on account of increase in transportation charges.

7.1 Ld. AR for the assessee has submitted before us that the AO has made the above disallowance being allegedly excessive expenditure incurred under this head in comparison to the earlier years. The assessee

firm during the assessment year, had purchased coal worth Rs.5,12,79,932/- and has paid transport charges of Rs.56,48,577/- as against Rs.28,98,775/- paid in the earlier year. As per Assessing Officer, the rate of increase in transport charges as compared to earlier year is quite excessive in relation to purchase of coal, the AO has applied the rate of increase in the cost of coal to the transport charges and have made a total disallowance of Rs.12,85,223/- in transport charges being held to be very much excessive and inflated. The Id AR for the assessee submitted that the rate of transportation charges has increased due to increase in operating charges during the year. The cost of transportation of coal have thus been much higher during this year than that of the immediately preceding year.

7.2 On the other hand, Id. DR for the revenue has primarily reiterated the findings of the Id. CIT(A), which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7.3 Having heard the submissions, perused the material available on records, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id AR for the assessee are supported by the facts narrated by him above. As we have noticed from the assessment year that the reasons given by the AO are extremely cryptic. The basic facts narrated by the assessee are not disputed by the Assessing Officer that the assessee had paid the transportation charges after deducting TDS and, hence, 15-I/J forms were not applicable to the assessee. The amount of TDS had been deducted on part of the

transportation charges paid. We also noticed that the assessee has made part of payment by cash through vouchers and we noticed that these payments have been in sums lower than Rs.20000/-. The AO has made the estimated disallowance without invoking the provisions of Section 40(a)(ia). The Assessing Officer did not mention in his order about the non-availability of truck nos./vouchers, therefore, estimated disallowance made by the AO without rejecting books of account is not justifiable. Considering the factual position, we are of the view that the order passed by the Id. CIT(A) does not require any interference, hence, we confirm the order passed by Id. CIT(A).

7.4 In the result, appeal filed by the Revenue on ground No.3 is dismissed.

8. In the result, appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this 19/04/2017.

Sd/-
(N.V.VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 19/04/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

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

1. अपीलार्थी / The Appellant-JCIT, Range-3, Asansol
2. प्रत्यर्थी / The Respondent.-M/s Pawan Hardcoke Industries
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY
ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata