

आयकर अपीलीय अधिकरण, मुंबई ए खंडपीठ

The Income-tax Appellate Tribunal -“A”Bench Mumbai

श्री राजेन्द्र,लेखा सदस्य एवं श्रीमती बीना पिल्लई, न्यायिक सदस्य

Before Sh.Rajendra,Accountant Member and Ms.Beena Pillai,Judicial Member

आयकर अपील सं /ITA No.5007/Mum/2012, निर्धारण वर्ष /Assessment Year 2005-06

Income tax Officer 3(1)(1), Room No.666, 6 th Floor Aayakar Bhavan, MK Road Mumbai-20.	Vs.	M/s. Advance Refractory Technology P. Ltd., C-127, Udyog Bhavan, CTS No.85, Sonawala Road, Goregaon(E) Mumbai-63. PAN: AACCA 8275 G
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Assessee by

: None

प्रत्यर्थी की ओर से/Revenue by

: Shri R.A. Dyani

सुनवाई की तारीख / Date of Hearing

:29.10.2015

घोषणा की तारीख / Date of Pronouncement

:29.10.2015

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

Per Rajendra, A.M.लेखा सदस्य राजेन्द्र के अनुसार:

Challenging the orders dated 31.5.2012 of the CIT(A)-5, Mumbai, the Assessing Officer(AO) has filed the present appeal.

Assessee-firm,engaged in the business of trading of refractory materials.Original assessment was completed on 24.12.2007,u/s.143(3) of the Act,assessing the income of the assessee at Rs.7.13 crores,wherein an addition on account of unexplained liability was made amounting to Rs.5.50 crores.The AO further made an addition of Rs.1.53 crores,estimating the gross profit. The matter travelled up to the Tribunal,who set aside both the issues to the file of the AO to consider the additional evidences and decide the issue afresh.The AO while completing the assessment u/s.143(3) r.w.s.254 of the Act,on 27.11.2011 determined its income at Rs.1.44 crores.

2.The effective ground of appeal is about deleting the addition of Rs.1.34 crores on account of prior period expenses.During the set aside proceedings,the AO found that the assessee had claimed the amount of Rs.1,34,88,851/-on account of debit by M/s. Ispat Industries Ltd.(IIL),that the same was not credited in the books of accounts for the AY 2004-05, that the expenses in question pertained to earlier year,that it had debited the said sum in the books of account for the year under appeal.He called for an explanation from the assessee in that regard.After considering the submissions of the assessee ,dt.27.9.2011,the AO held that the expenses pertained to AY 2004-05 and not to the year under appeal, that there was a dispute between the assessee and IIL,that the claim made by the assessee was an after - thought,that the assessee had not produced any documentary evidence in support of his claim,that the claim made by the assessee was not acceptable.Finally, he added back a sum of Rs.1.34 crores to the income of the assessee.

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority (FAA).Before him,it made elaborate submissions and filed a tabular chart displaying the details of disallowance made in the assessment order and same reads as under :-

Sr.	Particulars	Amount(Rs.)
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No			
1.	Exchange rate Fluctuation	64,14,263	
2.	Exchange rate fluctuation	<u>7,02,967</u>	
			71,17,230
3.	Custom duty	2,93,534	
4.	Custom duty	1,87,814	
		-----	4,81,348
5.	Compensation for material shortage/damages		12,27,804
6.	Material Reject	98,528	
7.	Material Reject	1,19,365	
8.	Material Reject	42,999	

			2,60,892
9.	Material shortage and discounts		5,25,494
10.	Material shortage and discounts		76,082

	Expenses claimed in impugned year	(A)	96,88,851
11.	Account adjustment with Delta Steel & Iron (Not an expense & not debited in audited P&L account)	(B)	38,00,000

		Total(A+B)	1,34,88,851

It was argued before him that the assessee had claimed the revenue expenses of Rs.96.88 lacs, that the balance amount of Rs.38.00 lacs represented the adjustment, journal book entry passed in assessee's books of account for settling the accounts of three parties. After considering the submission of the assessee the FAA held that assessee had debited the account of M/s. Orissa Industries Ltd. and had credited the Account of IIL, that from the confirmation of IIL it was clear that it had passed similar journal entry, that the assessee had not claimed expenditure of Rs.38.00 lacs in its P&L account, that the AO had not brought any evidence to prove that Rs.38 lacs was claimed as an expenditure during the year under appeal. Accordingly, the FAA deleted the disallowance of Rs.38.00 lacs. With regard to the balance disallowance of Rs.96.88 lacs, the FAA held that the said expenditure comprised of foreign exchange fluctuation loss (Rs.71.17 lacs), custom duty (Rs.4.81 lacs), compensation (Rs.12.27 lacs) and material rejections etc. (Rs.8.61 lacs), that the perusal of record filed by the assessee, proved that the expenses were incurred in the course of business, that the AO had disallowed the expenses for the reason that such expenses were related to the earlier year, that the expenditure in question was allowable during the year under consideration as expenses had been ascertained and crystallized during the year only, the AO was not justified in brushing aside various documents filed by the assessee during the assessment proceedings, that the copies of Civil Suit, petition of Interim Injunction dt.11.5.2004, Civil Courts stay order, consent terms and Courts notice dt.24.1.2005 proved that there existed serious dispute between the parties, that during the year under appeal the dispute was settled and the expenses were crystallized, that the correspondence between the assessee and IIL proved that the dispute was not settled in the earlier AY. He referred to the

case of Seshasayee Paper and Board Ltd.(260 ITR 415) and other cases relied upon by the assessee.Finally,he held that the claim of the expenses was allowable during the year under consideration.

4.During the course of hearing before us,the Departmental Representative(DR) supported the order of the AO.As stated earlier none appeared on behalf of the assessee .

5.We have perused the material available on recored.We find that the AO had rejected the claim of the assessee as he was of the opinion that the expenditure did not pertain to the year under appeal.As far as incurring of expenditure is concerned there is no dispute about it.Out of the total expenditure of Rs.1.34 Crores the assessee had not claimed expenditure of Rs. 38 lakhs in the books of accounts.The FAA has given a categorical finding of facts in that regard. Therefore,in our opinion,the AO was not justified in disallowing the said expenditure. As far as balance amount of Rs.96.88 lakhs is concerned,it is found that serious litigation was going on between the assessee and IIL,that matter was settled only after the court intervened,that the FAA has perused the documents related with the court proceedings and had given a categorical finding of fact. Once it is found that the liabilities or expenses of earlier year/(s)were crystallised during a subsequent year then there is no justification for disallowing the same.The assessee had produced all the necessary evidence with about the pending court proceedings before the AO,but he ignored the same.It is pertinent to note that the FAA has mentioned that the income of earlier year crystallised during the year was taxed by the AO while fianlising the assessment.If the AO had accepted that because of dispute income of the assessee was finalised during the year under appeal, then he should have accepted the claim of expenditure too.Considering the fact that the crystallisation of the expenditure took place during the year before us only,we are inclined to confirm the order of the FAA.Effective ground of appeal,filed by the AO,is decided against him.

As a result,appeals filed by the AO stand dismissed.

फलतःनिर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 29th,October,2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 29 अक्टूबर,2015 को की गई ।

Sd/-

(बीना पिल्लई / Beena Pillai)

न्यायिक सदस्य/Judicial Member

मुंबई Mumbai, दिनांक Date:29.10.2015

व.नि.स./v.Sr.PS.

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

1. Assessee /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5. DR "K" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि के खंडपीठ,आ.अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.