

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं
श्री. विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER &
SHRI VIKAS AWASTHY JUDICIAL MEMBER.

आयकर अपील सं./ I.T.A. No.1414/Mds/2011 and
ITA No.585/Mds/2012

(निर्धारण वर्ष / Assessment Years : 2007-2008 & 2008-2009)

The Assistant Commission of
Income Tax,
Company Circle IV (2),
Coimbatore

M/s. Lakshmi Machine Works
Ltds,
Vs Perianaickanpalayam,
Coimbatore 641 020.

[PAN :AAACL5244N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. S. Dasgupta, IRS, JCIT.

प्रत्यर्थी की ओर से / Respondent by : Shri. Saroj Kumar Parida, Advocate

सुनवाई की तारीख/Date of hearing : 03.12.2014.

घोषणा की तारीख /Date of Pronouncement : 02.01.2015.

आदेश / ORDER

PER VIKAS AWASTHY, JUDICIAL MEMBER

These two appeals have been filed by the Revenue
impugning the orders of Commissioner of Income Tax (Appeals) –I,

Coimbatore, dated 30.05.2011 for the assessment year 2007-08 and 22.12.2011 for the assessment year 2008-09, respectively.

2. In the appeal for the assessment year 2007-2008, the Revenue has raised three issues (I) Allowing local area expenses to the extent of 50%; (II) Allowing business promotion expenses to the extent of 50%; and (III) Deleting of disallowance on research and development expenses. In the appeal for assessment year 2008-2009, the Revenue has raised single issue with regard to research and development expenses.

3. The appeal for the assessment year 2008-2009 has been filed with the delay of 15 days. The Revenue has placed on record affidavit of Shri. A.S. Dinesh Kumar, Assistant Commissioner of Income Tax, Company Circle IV(2), Coimbatore, giving reasons for delay in filing of the appeal. After perusal of the same, we find that delay in filing of appeal is not deliberate or intentional. The delay of 15 days in filing of the appeal is condoned and the appeal is admitted to be heard on merits.

4. The brief facts of the case are, that the assessee is a company engaged in manufacture of textiles machinery. The assessee filed

return of income for the assessment year 2007-2008 on 29.10.2007 declaring income of ₹.2,57,19,02,523/-. The case of assessee was selected for scrutiny and notice under section 143(2) was issued to the assessee on 26.08.2008. During the assessment proceedings, the Assessing Officer made certain additions/disallowances which inter-alia include disallowance of Local Area Expenses ₹.21,65,286/-, Business Promotion Expenses ₹.29,48,957/- and expenditure on Research and Development ₹.2,00,00,000/-.

Aggrieved by the assessment order dated 30.12.2009, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order restricted disallowance of local area expenditure and business promotion expenditure to 50% and allowed expenditure on research and development in full.

5. For the assessment year 2008-09, the assessee filed return of income on 29.09.2008, declaring total income of ₹.322,93,19,130/-. During the course of scrutiny assessment, the Assessing Officer disallowed research and development expenditure amounting to ₹.50,00,000/-.

In appeal, the First Appellate Authority reversed the findings of Assessing Officer and allowed the claim of assessee with reference to Research and Development expenses. The Revenue has now impugned the findings of Commissioner of Income Tax (Appeals) on this issue.

6. Shri. S. Dasgupta, representing the Department submitted that the Commissioner of Income Tax (Appeals) erred in allowing local area expenses to the extent of 50%. The assessee has not placed on record any evidence in support of the said expenditure. Further, the assessee has not deducted tax at source on the alleged payments made to owners of the land where parking facility for the trucks have been made. On the issue of business promotion expenses, the learned Departmental Representative contended that no plausible reason has been given by the Commissioner of Income Tax (Appeals) for allowing 50% business promotion expenditure. In respect of findings of the Commissioner of Income Tax (Appeals) on the research and development expenditure, the learned Departmental Representative pointed out that Commissioner of Income Tax (Appeals) has allowed such expenditure on the basis of personal visit to the premises of the assessee company, whereas machinery has been installed at the

premises of M/s. Adwaith Textiles Limited. The Commissioner of Income Tax (Appeals) has granted relief to the assessee on the basis of certain documents which were not available before the Assessing Officer, nor any remand report was sought on the information/documents placed before the Commissioner of Income Tax (Appeals) for the first time. Thus, the provisions of Rule 46A have been violated. The learned Departmental Representative vehemently supported the order of Assessing Officer for both the impugned assessment years.

7. On the other hand, Shri. Saroj Kumar Parida, appearing on behalf of the assessee, vehemently defended the order of the Commissioner of Income Tax (Appeals). The learned counsel for the assessee contended that the impugned order is detailed and speaking. He prayed for sustaining the same and dismissing the appeals of the Revenue.

8. We have heard the submissions made by the representatives of both sides and have perused the orders of the authorities below. The first issue in appeal for the assessment year 2007-08 is with regard to allowing of 50% of local area expenditure. The assessee has

claimed ₹.21,65,286/- as local area expenditure. The said expenditure is allegedly made for creating parking facilities of the trucks carrying inward and outward materials/goods of the assessee company. The assessee has also alleged to have spent money for repair of link road connecting unit of the assessee at Perianacikenpalayam. The assessee has not placed on record the complete details of the local area expenses. The Commissioner of Income Tax (Appeals) has disallowed 50% of the expenditure claimed by the assessee after site inspection. The Commissioner of Income Tax (Appeals) has observed in his order that the road was in bad shape and the same been laid out temporarily for facilitation of the movement of the company trucks. The Commissioner of Income Tax (Appeals) restricted local area expenses to 50% based on his personal visit and information collected.

We observe that the disallowance has been restricted to 50% on the basis of personal visit to the site by Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) has not raised any doubt over the expenditure incurred by the assessee on local area development. In the facts of the case, we are not inclined to interfere with the findings of First Appellate Authority on this issue. Accordingly, this ground of appeal of the Revenue is dismissed.

9. The next issue in appeal is with regard to business promotion expenses. The assessee has claimed ₹.29,48,957/- as business promotion expenditure. The assessee has not placed on record any document in support of such expenditure. The First Appellate Authority has restricted the expenditure to 50% merely on estimation. While allowing 50% expenditure, the Commissioner of Income Tax (Appeals) has not given any reason. The contention of the assessee is that business promotion expenditure is towards incentives/gifts given to the representatives of customer companies to maintain cordial business relations. However, the assessee has not placed on record the details of the persons to whom such incentives were given. We do not find any reason in allowing even 50% of such expenditure in the absence of any document or any other evidence. This ground of the Revenue is allowed and the entire business promotion expenses are disallowed.

10. The third issue raised by the Revenue in appeal for the assessment year 2007-2008 is with regard to Research and Development expenses. This issue is also raised in appeal for the assessment year 2008-09. The assessee has made payment of ₹.2,00,00,000/- in assessment year 2007-2008 and ₹.50,00,000/- in assessment year 2008-2009 to M/s. Adwait Textiles Limited for using

its premises for installing machines and making observation under actual working conditions.

The assessee had entered into an agreement dated 14.12.1998 with M/s. Adwaith Textiles Limited to undertake research and development activities under mill conditions. The assessee has installed different kind of machines at the premises of M/s. Adwaith Textiles Limited to monitor their performances under real time working conditions. During this trial period, there was a loss of production as machinery had to be stopped on several days for number of hours. The assessee paid ₹.2,00,00,000/- as compensation for production loss on account of frequent intervention during production period. The Commissioner of Income Tax (Appeals) in his order has listed out different machines that were put to test on the premises of M/s. Adwaith Textiles Limited for carrying out various tests on the machines. It has been highlighted that extra manpower was required for observations and study of activities such as: (i) monitoring consistency of yarn quality; (ii) Noise level, vibration study; (iii) Silver breakage study etc. The assessee had submitted the details of the subsystem and the technicians who were maintaining the machines during the relevant period. The assessee further provided the details of various tests which were conducted to improve the efficiency,

endurance, production quality and efficacy of the machines. The assessee company continued to experiment with different machine models and also with different spaces and raw materials till the machine stabilizes. The assessee has further furnished details of actual utilization capacity of M/s. Adwaith Textiles Limited during R & D activities. The assessee was able to establish before the Commissioner of Income Tax (Appeals) that M/s. Adwaith Textiles Limited suffered production loss and also the quality of yarn because of frequent interruption in production. The Commissioner of Income Tax (Appeals) in his order has categorically observed that the amount paid by the assessee to M/s. Adwaith Textiles Limited for using the mill floor facility has been assessed to tax in the relevant assessment years. The Revenue has not been able to controvert the findings of the Commissioner of Income Tax (Appeals). We do find any reason to interfere with the well reasoned findings of the First Appellate Authority in deleting the disallowance of research and development expenses. This ground of appeal of the Revenue is dismissed, accordingly.

11. So far as the objection of Revenue for violating the provisions of Rule 46A is concerned, we do not find any merit in the same. The Revenue has not been able to list out the fresh material brought for

the first time on record before Commissioner of Income Tax (Appeals) by the assessee.

A perusal of the impugned order shows that the Commissioner of Income Tax (Appeals) has not accepted any fresh evidence to come to final conclusion except personal visit to the factory premises to have first hand information on Research and Development activities.

12. In result, the appeal of the Revenue in ITA No.1414/Mds/2011 for the assessment year 2007-2008 is partly allowed and the Revenue's appeal in ITA No.585/Mds/2012 for the assessment year 2008-09 is dismissed.

Order pronounced on Friday, the 2nd of January, 2015, at Chennai.

Sd/-
(**ए. मोहन अलंकामणी**)
(A.MOHAN ALANKAMONY)
लेखा सदस्य/ ACCOUNTANT MEMBER
दिनांक/Dated:02.01.2015.
K.V

Sd/-
(**विकास अवस्थी**)
(VIKAS AWASTHY)
न्यायिक सदस्य /JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/
Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

