

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.438/Bang/2013
Assessment Year :2008-09

M/s. Shamanur Sugars Ltd., No. 374, 4 th Main, P.J. Extension, Davangere. PAN: AAKCS 3216P	Vs.	The Assistant Commissioner of Income Tax , Circle – 1, Davangere.
APPELLANT		RESPONDENT

ITA No. 666/Bang/2013
Assessment Year : 2008-09

The Deputy Commissioner of Income Tax, Circle – 1, Davangere.	Vs.	M/s. Shamanur Sugars Ltd., No. 374, 4 th Main, P.J. Extension, Davangere. PAN: AAKCS 3216P
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri Sanjay kumar, CIT (DR)

Date of hearing	:	21.09.2017
Date of Pronouncement	:	31.10.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

These are cross appeals filed by the assessee and revenue which are directed against the order of CIT(A), Hubli dated 29.01.2013 for Assessment Year 2008-09.

2. The grounds raised by the assessee in its appeal are as under.

“1. BECAUSE, the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts while confirming / making the additions/disallowances made by the assessing officer,

a) Disallowance of Depreciation U/S 32 of the Income Tax Act, 1961 amounting to Rs.41,73,299/- and expenditure on the Aircraft U/S 37 amounting to Rs.74,08,273/-

- b) *Disallowance of expenses of Repairs and Maintenance of 20% U/S 40A (3) of the Income Tax Act, 1961 amounting to Rs.65,43,465/-.*

2. *BECAUSE, the Learned Commissioner of Income Tax (Appeals) has erred in overlooking and in summarily rejecting the detailed Statement of Facts submitted along with the Memorandum of Appeal, various documents and evidences placed in paper book filed on various dates of hearing.*

3. *Disallowance of Depreciation U/S 32 and Disallowance of the expenditure claimed on Aircraft U/S 37 of the IT Act, 1961,*

a) *The learned CIT (Appeals) has not justified in failing to consider the submissions of the appellant and the observations of the Learned Commissioner of Income Tax (Appeals) in the Order are perverse, arbitrary, baseless and misleading. Despite the fact the assessee has maintained detailed Books of Accounts and furnished all the information as sought by the Learned Commissioner of Income Tax (Appeals).*

b) *The learned CIT (Appeals) is not justified in confirming the Disallowance of Depreciation U/S 32 of the Income Tax Act, 1961 amounting to Rs.41,73,299/- and expenditure on the Aircraft U/S 37 amounting to Rs.74,08,273/- was made on surmises and without any basis .The AO has not considered the submissions made by the assessee and has made the said disallowance only on assumptions.*

c) *The learned CIT (Appeals) has not categorically considered the usage of the Aircraft in the business of the assessee and is used in the business exigencies of the assessee for attending meeting of export of sugar with various dignitaries and also to attend meeting of Electricity power as and when called by the various authorities and other business related works the said aircraft is used and as the same is exclusively used for the purpose of company and no part of it has been used for the personal use of the Directors as stated by the Learned AO. The learned CIT (Appeals) has failed to appreciate the above and has confirmed the disallowances made by the AO to the extent of Rs.41,73,299/- on account of Depreciation on Aircraft u/s 32 and disallowance of expenditure incurred on Aircraft to the extent of Rs.74,08,273/- u/s 37 of the IT Act,1961 , and the same requires to be deleted in the facts and circumstances submitted by the assessee.*

4. *Disallowance of expenses under the head 'Repairs and Maintenance'*

a) *The learned CIT (Appeals) has not justified in failing to consider the submissions of the appellant and the observations of the Learned Commissioner of Income Tax (Appeals) in the Order are perverse, arbitrary, baseless and misleading. Despite the fact the assessee has maintained detailed Books of Accounts and furnished all the information as sought by the Learned Commissioner of Income Tax*

(Appeals).

b) The learned CIT (Appeals) is not justified in confirming the disallowance made by the learned AO to the extent of Rs.65,43,465/- and was made on surmises and without any basis. The AO has not considered the submission made by the assessee and has made the said disallowance only on assumptions.

c) The learned CIT (Appeals) and the learned AO has not considered the submissions made by the assessee and the learned AO has made an Adhoc disallowance with some bias in mind and further he has not narrated a single instance and has categorically disallowed the said amount without any basis. The said expenditure has been incurred for the maintenance of the plant and machinery which is used in the business of the assessee and all the payments are made through banking channels and all the expenditure has been supported with necessary bills ,vouchers, receipts etc and detailed particulars The learned CIT (Appeals) has failed to appreciate the above and has confirmed the disallowances which was made without any basis and on an Adhoc basis made by the AO to the extent of Rs.65,43,465/-, and the same requires to be deleted in the facts and circumstances submitted by the assessee.

5. The assessee craves leave to add / alter any of the grounds of appeal before or at the time of hearing.

3. The grounds raised by the revenue in its appeal are as under.

“1. The order of the learned Commissioner of Income Tax(Appeals), Hubli, is contrary to the law and not on the facts and circumstances of the case.

2. The order of the learned CIT(A)is perverse in so far as the reasons given for disallowances deleted by him.

3. The learned CIT(A) has accepted additional evidence in the form of purchase details for cane in violation of rule 46A(3),with regard to cane purchases.

4. The deletion made by the CIT(A) in respect of Bio-fuel pellets purchases added back is contrary to the facts of the case allowing the claim based on the view taken for A.Y.2004-05 is not proper .

5. The purchases disallowed in respect of both cane and bio-fuel pellets is in keeping with the view taken in the case of Sri.S S Bakkesh. The order of CIT(A) in the case of Sri.S S Bakkesh is appealed against and pending for adjudication. The decision will have direct implication in this case.

6. For these and other grounds that may be urged upon at the time of hearing.

7. The appellant craves leave to add, alter, amend any of grounds.”

4. First we take up the assessee's appeal. The Id. AR of assessee submitted that ground nos. 1 and 2 are not pressed and out of ground no. 3 also, the issue regarding disallowance of depreciation u/s. 32 is not pressed. The only issue involved in ground no. 3 to be decided is disallowance regarding claim on aircraft expenses u/s. 37 of the I.T. Act, 1961. Accordingly ground nos. 1 and 2 are rejected as not pressed and part of ground no. 3 regarding disallowance of depreciation u/s. 32 is rejected as not pressed.
5. Regarding the remaining issue involved in ground no. 3 in respect of disallowance of expenditure claimed on aircraft u/s. 37 of the I.T. Act, 1961 and the issue involved in ground no. 4 of the appeal in respect of disallowance under the head Repairs and Maintenance, it was submitted by Id. AR of assessee that as per page no. 12 of the order of CIT(A), he decided the issue regarding the assessee's claim of Rs. 65,43,465/- under the head Repairs and Maintenance against the assessee on this basis that the assessee has not filed details in support of the claim of Repairs and Maintenance. She submitted that in the interest of justice, this issue may be restored back to the file of AO for fresh decision and if this is done, the assessee will submit the relevant details. She also pointed out that on pages 60 to 85 of the paper book, the assessee has enclosed copy of various invoices on account of these expenses. The Id. DR of revenue supported the order of CIT(A).
6. We have considered the rival submissions. We find that it is noted by CIT(A) in page no. 11 of his order that it is found from the balance sheet that the loan has been taken in the last year itself. He also noted that the assessee was requested to explain the business use of aircraft for the purpose of business of the company when the company is manufacturing sugar and mainly deals with the agriculturists and he has given a finding that the business need of the aircraft has not been explained. In this view of the matter, we find no reason to interfere in the order of CIT(A) regarding rejection of assessee's claim on account of depreciation of aircraft and the expenditure incurred on aircraft.
7. Regarding the assessee's claim for expenses under the head Repairs and Maintenance Rs. 65,43,465/-, we feel it proper to restore back the matter to the

file of AO for fresh decision. We order accordingly. This issue is restored back to the file of AO for fresh decision with the direction that the assessee should furnish required details and evidence before the AO in respect of assessee's claim for Repairs and Maintenance expenses and thereafter, the AO should pass necessary order as per law after providing reasonable opportunity of being heard to assessee. Ground no. 4 is allowed for statistical purposes.

8. Now we take up the revenue's appeal. As per ground no. 3 of revenue's appeal, this is the grievance of the revenue that CIT(A) has accepted the additional evidence in the form of purchase details for cane in violation of rule 46A(3) with regard to cane purchases. We find that on page no. 8 of his order, it was noted by CIT(A) that in the case of Shri S.S. Bakkesh for Assessment Year 2007-08, it was submitted by Shri S.S. Bakkesh before the CIT(A) in his case that he had sold 73.4% of total production of biofertilizers / bio-compost to the farmers of Shamanur Sugars Limited which means that the farmers supplying the sugarcane to the company were getting part cash / part bio-compost in lieu of selling sugarcane. He has further noted on the same page of the order that production of bio-compost in the hands of Shri S.S. Bakkesh to the extent of Rs. 11,63,56,052/- has been treated as bogus and the sale of bio-compost amounting to Rs. 11,17,06,900/- to the farmers of Shamanur Sugars Limited through the company is treated as bogus. It is further noted that since this is included in the cane purchases, amount of Rs. 11,17,06,900/- is disallowed from the purchases and added to the returned loss under the head "Income from other sources". Before CIT(A) this was the claim of the assessee that the assessee has not debited in the books of accounts on account of purchase of bio-compost which was purchased by the farmers of assessee company. Thereafter it is noted by CIT(A) in page no. 9 of the order that only details of purchase of cane is there and there is no purchase of biofertilizer and therefore, the contention of the AO that cane purchases includes biofertilizer is not justifiable and on this basis, he deleted the disallowance made by the AO. In our considered opinion, CIT(A) has not properly understood the AO's objection. In our understanding, the objection of the A. O. is this that against the cane supply by the farmers and debited by the assessee in P & L account, only part amount has been paid by the assessee to the agriculturists in the form of cash and the remaining part to the extent of Rs. 11,17,06,900/- was not paid by the

assessee by cash or cheque and it is shown as paid in the form of bio-compost supplied by Shri S.S.Bakkesh to those farmers. Once it is accepted that the claim of the assessee that the payment to this extent is by way of supply of bio-compost to the farmers and such claim is found bogus, it is implied that no payment is made by the assessee to farmers in respect of that part of cane purchase shown by the assessee and therefore, as a consequence, it has to be held that the cane purchases claimed by the assessee to this extent is also bogus unless the assessee shows that payment is made in some other manner and not in the mode of supply by Mr. Bakkesh as stated by the A. O. In our considered opinion, this aspect of the matter should be examined afresh by examining the quantitative details of sugar produced and sugarcane consumption shown by the assessee along with yield ratio to find out as to whether the quantity of sugarcane purchase and consumption shown by the assessee is proper or not as per the figure of sugarcane production and yield ratio and thereafter, this issue is to be seen as to whether the per quintal purchase price shown by the assessee is market price or it is inflated cost if part payment in respect of sugarcane purchase is bogus then it will be found that either the quantity of cane purchase shown by the assessee is inflated or such cane purchase is shown at excessive price. We, therefore feel it proper to restore this matter back to the file of AO for fresh decision in the light of above discussion after providing adequate opportunity of being heard to assessee.

9. In the result, the appeal of the revenue is allowed for statistical purposes.
10. In the combined result, appeal filed by the revenue is allowed for statistical purposes whereas the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st October, 2017.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.